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# Recovering Socialism for Feminist Legal Theory in the 21 st Century

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## Article

### Recovering Socialism for Feminist Legal Theory in the 21st Century

CYNTHIA GRANT BOWMAN

*This Article argues that a significant strand of feminist theory in the 1970s and 1980s—socialist feminism—has largely been ignored by feminist jurisprudence in the United States and explores potential contributions to legal theory of recapturing the insights of socialist feminism. It describes both the context out of which that theory grew, in the civil rights, anti-war, and anti-imperialist struggles of the 1960s, and the contents of the theory as developed in the writings of certain authors such as Heidi Hartmann, Zillah Eisenstein, and Iris Young, as well as their predecessors in the U.K., and in the practice of socialist feminist groups in the United States during the same period. Although many American feminist legal theorists themselves participated in or were influenced by the progressive movements of the 1960s and 1970s, socialist feminism is virtually absent from their writings, except for those of Catharine MacKinnon, who, despite sympathy with the approach, disagreed with it and went on to develop her own version of feminist equality theory. The author argues that the time is now ripe to recapture this strand of feminism and explore what it would add to the study and pursuit of women's equality.*

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# Recovering Socialism for Feminist Legal Theory in the 21st Century

CYNTHIA GRANT BOWMAN \*

## INTRODUCTION

Bernie Sanders's popularity notwithstanding, it has long been the accepted wisdom that there is no tradition of socialism in the United States. Numerous authors have pointed to the absence of a Left political tendency expressed in a social democratic or Labour Party here, as there are in the U.K. and continental European countries.<sup>1</sup> There was, however, a vibrant tradition of socialist feminist theory during the 1970s and 1980s. Yet this tradition did not make its way into the legal academy along with the feminist women who developed the field of feminist legal theory. This Article is an attempt to recapture this lost strand of feminist theory and to suggest ways in which its recovery would be helpful to the agenda for both research and legal reform.

Many of the first generation of feminist legal theorists came of age during a period of intense political activity and were active in civil rights, antiwar, and feminist groups.<sup>2</sup> During the 1960s and 1970s, many of these groups were heavily influenced by Marxist and socialist theory, and thus activist women were presumably well-versed in it. When these feminists went to law school, they were influential in establishing courses about women and the law, advancing litigation on behalf of women, and developing the field of feminist jurisprudence. Yet, with a few exceptions, socialist feminism appears to have been forgotten in this development. Although socialist feminist theory was quite highly developed during the 1980s and has continued to be refined in academic disciplines other than

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\* Dorothea S. Clarke Professor of Law, Cornell Law School. I am grateful to so many people for the suggestions that have found their way into this article, including Ben Altman, Bernardine Dohrn, David Gilbert, Aziz Rana, Anna Marie Smith, Sidney Tarrow, and Qiu Zhaoji, as well as all my Cornell Law School colleagues who commented on it at our January 2016 faculty retreat. I am also grateful for the wonderful resources of the Cornell University Law Library and especially for the clever and continuing assistance of law librarian Amy Emerson.

<sup>1</sup> See WERNER SOMBART, WARUM GIBT ES IN DEN VEREINIGTEN STAATEN KEINEN SOZIALISMUS? (1906); Seymour Martin Lipset, *Why No Socialism in the United States?*, in 1 SOURCES OF CONTEMPORARY RADICALISM 31 (Seweryn Bialer & Sophia Sluzer eds., 1977); Eric Foner, *Why Is There No Socialism in the United States?*, 17 HIST. WORKSHOP 57 (1984).

<sup>2</sup> See, e.g., Cynthia Grant Bowman, *The Entry of Women into Wall Street Law Firms: The Story of Blank v. Sullivan & Cromwell*, in WOMEN AND THE LAW STORIES 415, 419–21 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011) (describing the backgrounds of the founders of New York University Law School's Women's Rights Committee).

law, that branch of feminist thought is not overtly present in feminist jurisprudence.

In Section I below, I set the historical background, giving a brief introduction about Marxism and law before describing the women's movement in the United States in the 1960s and 1970s and its relationship to the New Left. As women's groups broke off from New Left groups for a variety of reasons, many of the independent organizations they founded were avowedly socialist in orientation, devoted to the idea that socialism and genuine equality for women were necessarily linked. I describe the theory those women developed, including the contrast between dual systems and unified systems theories, as well as the political strategies they embraced as a result. I also briefly describe how feminist socialist theory was influential in women's studies and continued to be developed by theorists in disciplines such as political science and philosophy.

In Section II, I discuss the virtual absence of socialist feminist theory in feminist jurisprudence, which came to be categorized into liberal, radical, cultural or relational, critical race, and a variety of post-modern approaches. While there are some indications that early feminist legal theorists were familiar with socialist feminist thought, the primary injection of Left legal theory into law schools was by adherents of the Critical Legal Studies movement, from whom Left-leaning feminist scholars soon broke away, to continue their inquiries as "femcrits," "racecrits," or "Latcrits." The insights of the 1980s socialist theorists, however, appear to have been largely lost.

As a working definition of socialism for the purposes of this Article, I propose that it is a theory that includes (1) an analysis that sees economic forces as the primary, although not sole, drivers of history; (2) the idea that capitalism is incompatible with full human flourishing, especially for women; and (3) a goal of using the state to democratize both the economy and society, so that basic human needs are given priority over profits. Based on this definition and the socialist feminist scholarship discussed below, in Section III, I describe the contributions socialist feminism could make to feminist legal theory. I also suggest, for a variety of reasons, that the time may be ripe for a revival of this strand of feminist theory.

## I. HISTORICAL BACKGROUND

Understanding the context that nurtured many early feminists in the 1960s and 1970s requires both a basic familiarity with Marxism and its relationship to feminism and law, and some understanding of the history of the women's movement in the United States during those decades. After laying that foundation, I describe the development of socialist feminist theory at that time, including its break from orthodox Marxist theory and New Left groups. To appreciate the insights of this new school of thought, I examine the work of theorists who played key roles in its evolution in the United States, such as Heidi Hartman, Zillah Eisenstein, Iris Young, Nancy

Hartsock, and Alison Jaggar, and their debate over whether women's status was best addressed as the product of dual systems of capitalism and patriarchy or of a unified system in which the two were interdependent. I also discuss some of the political organizing and strategies that arose out of this branch of feminism. My goal is to show that this theory was sophisticated, that it was relevant to legal theorizing, and that it never lost sight of the necessity to take account of the interrelationships among gender, race, and class. It is possible to trace the development of this theory into the present in disciplines such as philosophy, sociology, and political science, although it was absent as an identifiable strand of the feminist theory that developed within the legal academy in the 1980s.

#### A. *Marxism and Law and Feminism*

Marxist socialism posits that historical change is determined by economic forces, on the one hand, and the accompanying mode of economic and social organization particular to an historical era, on the other. Each historical stage is characterized by a certain "mode" of production and accompanying "relations" of production.<sup>3</sup> Under capitalism, for example, the means of production (factories, tools, technology, capital) are privately owned and controlled by one class (the bourgeoisie); and labor is performed by another class (the working class or proletariat), who do not own the means of production but instead sell their labor to the owners of capital in return for a wage.<sup>4</sup> Each historical period is characterized by its dominant classes, and historical change is the result of class struggle.<sup>5</sup> For example, during the Industrial Revolution, work moved out of the home, where it had been under the ownership and control of the workers, and into factories, where it was owned and controlled by their owners. Each economic revolution is accompanied by a political revolution to establish the form of state that serves the economic purposes of the dominant class and maintains control by that class over other classes.<sup>6</sup> For capitalism, these functions are performed by the liberal democratic state, which assures order and protects private property but also guarantees a large measure of freedom in the so-called "private sphere." History, according to socialist theory, is a dialectic—that is, it proceeds by the confrontation of opposites, which are then superseded by a new synthesis—carried out by class struggle.<sup>7</sup>

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<sup>3</sup> Karl Marx, *Preface to A CONTRIBUTION TO THE CRITIQUE OF POLITICAL ECONOMY*, reprinted in THE MARX-ENGELS READER 3–6 (Robert C. Tucker ed., 2d ed. 1978).

<sup>4</sup> Karl Marx, *Wage Labour and Capital*, reprinted in Tucker, *supra* note 3, at 203, 207–10.

<sup>5</sup> See Karl Marx & Friedrich Engels, *Manifesto of the Communist Party*, reprinted in Tucker, *supra* note 3, at 469, 473–75 (discussing class struggle in different periods of history).

<sup>6</sup> *Id.* at 475 (describing the relationship between dominant economic class and corresponding form of state).

<sup>7</sup> *Id.* at 477–83.

When legal scholars proceed from a strictly Marxist analytical framework, the first obstacle they confront is the position assigned to law within orthodox Marxism. Along with ideology, religion, and culture in general, law, according to Marx, is simply one aspect of the so-called "superstructure" that directly reflects and changes with the economic system.<sup>8</sup> Post-Marxist theorists rebelled against this strict economic determinism to posit the relative autonomy of the law, seeing it as connected to but not determined by the economic substructure.<sup>9</sup> Rather, the law affects economic relations as well as reflecting them; the two are interdependent. More important, the state and law remain contested sites, not always fully dominated by capital; and capital must continuously struggle to maintain its hegemony. This interpretation made its way into the United States legal academy in the Critical Legal Studies movement, described in more detail below.<sup>10</sup>

Socialism is a much broader category than just the theory of Marx and Engels. It both preceded them—in the work of those they called "utopian" socialists, such as Fourier, Proudhon, and Saint-Simon—and was revised and adapted after Marx's death.<sup>11</sup> Modern socialism, moreover, is marked not only by adaptation of Marx's theories, but also by their attempted embodiment in the Communist systems established in Russia, China, and other countries; the political practice of European social democratic and communist parties; and that of the Fabian Society and Labour Party in the United Kingdom.<sup>12</sup> The position of women was an issue for all these theorists from the beginning.

Friedrich Engels saw women's subordination and position within the family as resulting from the origins of private property and the state and proclaimed, as did Marx, that women's liberation depended simply upon the abolition of private property and the establishment of communism.<sup>13</sup> In the

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<sup>8</sup> Karl Marx, *The German Ideology*, in Tucker, *supra* note 3, at 154.

<sup>9</sup> See, e.g., Costas Douzinas & Ronnie Warrington, *Domination, Exploitation, and Suffering: Marxism and the Opening of Closed Systems*, 11 AM. B. FOUND. RES. J. 801, 810–12 (1986) (discussing Althusser, Poulantzas, Miliband, and others).

<sup>10</sup> See Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1534–37 (1991); Mark Tushnet, *Marxism and Law*, in 2 THE LEFT ACADEMY: MARXIST SCHOLARSHIP ON AMERICAN CAMPUSES 157 (Bertell Ollman & Edward Vernoff, eds. 1984).

<sup>11</sup> For information about socialism prior to Marx, and the utopian socialists in particular, see ALEXANDER GRAY, *THE SOCIALIST TRADITION: MOSES TO LENIN* 136–96 (1946) (describing the thought of Saint Simon and Fourier).

<sup>12</sup> See, e.g., Douzinas & Warrington, *supra* note 9, at 805 (describing the turn from Marx to European Marxism).

<sup>13</sup> See FRIEDRICH ENGELS, *THE ORIGIN OF THE FAMILY, PRIVATE PROPERTY AND THE STATE* 64–91 (Pathfinder Press 1972) (1884) (arguing, based on the anthropological work of Lewis H. Morgan on Native Americans, that the original state was characterized by both communism and matriarchy, and that monogamous marriage and the virtual enslavement of women resulted in order to ensure inheritance by men's legitimate offspring when agricultural civilizations prevailed over hunter-gather civilizations, giving rise to alienable property).

meantime, women were admonished to support the struggle for a proletarian revolution, and their own issues were seen as distractions from that battle.<sup>14</sup> In the future society, women would be men's equals, entering the workforce and socializing housework. Yet somehow the goal of equality never seemed to be reached in the countries where communist revolutions took place.

#### B. *The Women's Movement in the U.S. in the 1960s and 1970s*

Feminism has been described as having been "reborn" during the 1960s after a period of relative quietude, perhaps triggered by the publication of Betty Friedan's *The Feminist Mystique* in 1963.<sup>15</sup> Most of the newly active feminists were liberal democratic in political orientation and focused almost exclusively on women's issues. The institutional embodiment of this branch of the women's movement was the National Organization for Women (NOW) after its founding in 1966.<sup>16</sup> Liberal democratic theory was, of course, consistent with the political thought underlying the U.S. Constitution and the predominant ideology in the United States, with its emphasis on individualism and equality in the public sphere, so it is hardly surprising that most of the newly active feminists subscribed to this approach. Its partisans were responsible for a large number of changes in the status of women in a relatively short period, especially the successes of the litigation campaign for women's rights in the 1970s, and, with particular relevance to this Article, the influx of women into law schools, first as students and then as teachers.<sup>17</sup>

This was not the only branch of the women's movement in the 1960s and 1970s. There was also a very lively school of socialist feminism that came out of the activism of the civil rights and antiwar movements: the "New Left" of the 1960s (so-called in contrast to the "Old," or Communist, Left). To understand the content and development of socialist feminist theory, it is important to recognize the context out of which it emerged. Fortunately, several participants in early New Left feminism, as well as journalists and students of women's history and of the Sixties, have

<sup>14</sup> See, e.g., Marilyn J. Boxer, *Rethinking the Socialist Construction and International Career of the Concept "Bourgeois Feminism"*, 112 AM. HIST. REV. 131, 136–40 (2007) (chronicling the refusal of early socialist and communist women to collaborate with bourgeois feminist groups).

<sup>15</sup> ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* 344 (rev. ed. 1975). There were actually many ties of continuity between new and post-suffragist feminism, epitomized by struggles over progressive legislation and the Equal Rights Amendment between the 1920s and the 1960s and the participation of older women like Eleanor Roosevelt on the President's Commission on the Status of Women established by President Kennedy in 1962. See CYNTHIA GRANT BOWMAN ET AL., *FEMINIST JURISPRUDENCE* 16–20 (4th ed. 2011).

<sup>16</sup> NAT'L ORG. FOR WOMEN, *FOUNDING* (2011), <http://www.now.org/wp-content/uploads/2014/01/Founding.pdf> [https://perma.cc/RE7P-Q4HG] (last visited Sept. 1, 2016) (chronicling the history, founding, and the original members of the National Organization for Women).

<sup>17</sup> For a description of the women's rights litigation campaign, see BOWMAN ET AL., *supra* note 15, at 25–89. For a description of the entry of women into legal education, see *id.* at 962–79.



chronicled that evolution.<sup>18</sup> The stories they tell are similar. Echoing the influence of the anti-slavery movement on nineteenth-century feminists, many women, especially students, participated in the civil rights movement and its campaigns in the South during the early to mid-1960s.<sup>19</sup> In that movement, they, like the women who gathered at Seneca Falls in 1848, gained both the organizing experience and self-confidence in their skills that would prove important to the women's movement.<sup>20</sup> They developed politically and drew lessons about equality applicable to their own status, not only in society at large but also within the male-dominated organizations in which they worked.<sup>21</sup> Some began to raise questions about the division of labor within these activist groups, which they perceived as sexist.<sup>22</sup>

As the student movement in the North exploded during the Sixties, protesting military spending, racism, poverty, and conditions on university campuses, including collaboration with the military, many women were attracted to it. Its largest organizational manifestation was Students for a Democratic Society, or SDS, organized in 1962—a group with socialist intellectual origins that distinguished itself from the Old Left and emphasized participatory democracy as both an organizing and political goal.<sup>23</sup> SDS members undertook community organizing in poor areas of the industrial north, a role in which female members excelled and which radicalized many who had come from middle class origins.<sup>24</sup> The primary issue around which they organized was welfare rights.<sup>25</sup> These women, too, began to raise questions about the role of women in New Left work—about the heavily male leadership, an intellectual style of rhetoric that intimidated

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<sup>18</sup> ALICE ECHOLS, *DARING TO BE BAD: RADICAL FEMINISM IN AMERICA 1967–1975* (1989) (historian); SARA EVANS, *PERSONAL POLITICS: THE ROOTS OF WOMEN'S LIBERATION IN THE CIVIL RIGHTS MOVEMENT AND THE NEW LEFT* (1979) (participant); JO FREEMAN, *THE POLITICS OF WOMEN'S LIBERATION* (1975) (participant); JUDITH HOLE & ELLEN LEVINE, *THE REBIRTH OF FEMINISM* (1971) (journalists); RUTH ROSEN, *THE WORLD SPLIT OPEN: HOW THE MODERN WOMEN'S MOVEMENT CHANGED AMERICA* (2000) (historian and participant).

<sup>19</sup> See EVANS, *supra* note 18, at 60–101 (recounting the history of women participating in the civil rights movement).

<sup>20</sup> *Id.* at 82.

<sup>21</sup> ROSEN, *supra* note 18, at 107.

<sup>22</sup> See EVANS, *supra* note 18, at 86 (noting sex discrimination in the Student Nonviolent Coordinating Committee (SNCC), the automatic relegation of women to clerical work, and the exclusion of women from decision-making groups, all stemming from the assumption of male superiority). Stokely Carmichael's comment that "[t]he position of women in SNCC is prone" has been repeatedly cited as a stark example of sexism in SNCC, but women who were there when it was made state that it was clearly meant as a joke and was understood as such by everyone in the room. ROSEN, *supra* note 18, at 108–09.

<sup>23</sup> See, e.g., TODD GITLIN, *THE SIXTIES: YEARS OF HOPE, DAYS OF RAGE* 114–26 (1987) (describing the SDS concept of participatory democracy and distinction of itself from the Old Left); EVANS, *supra* note 18, at 105 (describing SDS as "new left . . . with roots in an older left tradition").

<sup>24</sup> See, e.g., GITLIN, *supra* note 23, at 366–67 (stating that the female participants in northern SDS projects were better organizers than the men); EVANS, *supra* note 18, at 141 (describing women's successful work as SDS community organizers).

<sup>25</sup> EVANS, *supra* note 18, at 151; ROSEN, *supra* note 18, at 111–12.

many women from speaking, and the assignment of traditionally female roles to women.<sup>26</sup> In this respect, these radical women were influenced by the examples of women in various liberation movements—in Cuba, Vietnam, and China, for example.<sup>27</sup> Demands for recognition of women's issues were raised repeatedly at SDS and related conferences but suppressed as diversions from the revolutionary anti-imperialist struggle.<sup>28</sup> The problems of women within the New Left were exacerbated as the antiwar movement became increasingly violent and SDS itself split, with the newly named Weathermen faction seceding in 1969 and eventually forming underground cells that carried out illegal activities.<sup>29</sup>

A crisis was reached at the National Conference for a New Politics held in Chicago in 1967, where a resolution on women's issues was dismissed without any hearing under particularly outrageous circumstances.<sup>30</sup> Angry at their treatment, women activists resolved to form their own autonomous groups. In Chicago, this ultimately led to the formation of the Chicago Women's Liberation Union (CWLU), the preeminent socialist feminist group in the United States during this period.<sup>31</sup> Although autonomous feminist groups formed in 1967 and 1968 in almost every major city, I will describe here the theory and practice of the CWLU because it was self-consciously socialist, published a document outlining its theoretical foundations, and engaged in practice reflecting that theory.

The CWLU existed from 1969 to 1977.<sup>32</sup> It is thought to have been the first group to use the term "socialist feminism" in its pamphlet "Socialist

<sup>26</sup> EVANS, *supra* note 18, at 160, 172.

<sup>27</sup> ECHOLS, *supra* note 18, at 54. Indeed, the Vietnamese required United States groups, during contacts with the Vietnamese, to include women in their delegations, to ensure that they spoke first, and the like. EVANS, *supra* note 18, at 188.

<sup>28</sup> EVANS, *supra* note 18, at 183–92; FREEMAN, *supra* note 18, at 57–59; HOLE & LEVINE, *supra* note 18, at 112–13; ROSEN, *supra* note 18, at 116–24, 126–27. David Gilbert, who was present, points out that although the women presenting a women's platform at the 1967 SDS convention were heckled, the resolution itself gained a majority and passed. Interview with David Gilbert, Auburn Correctional Facility, in Auburn, N.Y. (Dec. 23, 2014).

<sup>29</sup> See, e.g., GITLIN, *supra* note 23, at 381–404 (describing increasingly violent activities, growing sectarianism, and the role of the Weathermen faction within the movement). Alice Echols opines that if the Weathermen had not been such a dominant force, the rift between the New Left and women's liberation would not have grown so wide. ECHOLS, *supra* note 18, at 129.

<sup>30</sup> When the proponents of a women's resolution grew angry that they were denied the podium while the chair called on someone to speak about American Indians, the chair patted Shulamith Firestone on the head and said "Cool down, little girl, we have more important things to talk about than women's problems." FREEMAN, *supra* note 18, at 60; see also HOLE & LEVINE, *supra* note 18, at 112–14 (describing the dismissive attitude towards women's issues that pervaded the National Conference for a New Politics); ROSEN, *supra* note 18, at 128–29 (recounting the same event).

<sup>31</sup> FREEMAN, *supra* note 18, at 108 n.9.

<sup>32</sup> ECHOLS, *supra* note 18, at 136–37.

Feminism: A Strategy for the Women's Movement," published in 1972.<sup>33</sup> This thirty-two page pamphlet set forth both theoretical principles and a plan of action.<sup>34</sup> It described socialist feminism as follows:

From feminism we have come to understand an institutionalized system of oppression based on the domination of men over women: sexism . . . .

But we share a particular conception of feminism that is socialist. It is one that focuses on how power has been denied women because of their class position. We see capitalism as an institutionalized form of oppression based on profit for private owners of publicly-worked-for wealth . . . .

We share the socialist vision of a humanist world made possible through a redistribution of wealth and an end to the distinction between the ruling class and those who are ruled . .

..

This vision of society is in direct opposition to the present one which is based on the domination of the few over the many through sex, race and class. While there are concessions that it can make, the present form would not or could not adjust to the kind of people-oriented society outlined above.<sup>35</sup>

In other words, the CWLU saw itself as combining the insights of socialism and feminism, while continuing to engage in the anti-capitalist, anti-imperialist, anti-racist movement, but as a separate, all-female organization. Thus, it "defined socialist feminism against the 'dogmatic sectarianism' of Left political parties as well as against a mainstream feminism it characterized as too focused on personal empowerment, as lacking a structural analysis of capitalist patriarchy, and as complacent about the status quo."<sup>36</sup>

The CWLU document went on to describe goals that were desirable yet not possible under the present system, such as free healthcare, social responsibility for raising children, and free, client-controlled childcare.<sup>37</sup> It

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<sup>33</sup> Margaret Strobel & Sue Davenport, *The Chicago Women's Liberation Union: An Introduction*, CWLU HERSTORY (1999), <http://www.carolsim.com/cwluherstory/CWLUAbout/abdoc1.html> [<https://perma.cc/5SYD-QY6U>].

<sup>34</sup> CHICAGO WOMEN'S LIBERATION UNION, HYDE PARK CHAPTER, *SOCIALIST FEMINISM: A STRATEGY FOR THE WOMEN'S MOVEMENT* (1972) (available at <http://library.duke.edu/rubenstein/scriptorium/wlm/socialist/>) [<https://perma.cc/CT2W-ZTN9>] [hereinafter CWLU]. The page citations below refer to the pagination on a copy of the original pamphlet in possession of the author.

<sup>35</sup> *Id.* at 3–4.

<sup>36</sup> Judith Kegan Gardiner, *What Happened to Socialist Feminist Women's Studies Programs? A Case History and Some Speculations*, 34 FEMINIST STUD. 558, 569 (2008).

<sup>37</sup> CWLU, *supra* note 34, at 4.

outlined a dialectical theory of history. Rather than embracing “the utopian position which argues against any change until the perfect solution is possible” or “raising maximalist demands—demanding something that can’t be done under capitalism in order to prove that capitalism is bad,” the CWLU announced its intention to fight for reforms that would better women’s lives in the here and now while at the same time heightening the contradictions leading to change.<sup>38</sup> It described how to choose projects that would improve women’s lives, give them a sense of their own power, and also alter the existing relations of power, and applied those principles to various women’s issues, suggesting activities designed to bring about desired changes.<sup>39</sup> While acknowledging the dangers of establishing counter-institutions that might raise false hopes and divert attention from broader systemic change, its authors proposed—and, indeed, carried out—projects involving healthcare and childcare.<sup>40</sup> These projects, they hoped, would also serve as a way to reach a group larger than just women in anti-capitalist feminist organizations and raise their consciousness as well.<sup>41</sup>

The CWLU was an umbrella organization formed out of a number of preexisting groups, including “Jane,” the abortion counseling service that became a source of illegal abortions.<sup>42</sup> During its eight-year life span, the CWLU ran a Liberation School, helped develop women’s studies programs in the Chicago area, and operated a prison project that offered courses at the women’s prison in Dwight, Illinois.<sup>43</sup> A lesbian chapter worked for a municipal ordinance to protect gay and lesbian rights, and CWLU worked with other organizations to support cases about sex discrimination in employment and to promote reproductive rights.<sup>44</sup> An organization that continues to this day, Women Employed, grew out of CWLU efforts to reach working women.<sup>45</sup>

Somewhat similar groups organized in other cities. Shulamith Firestone, who had been patronized at the National Conference for a New Politics and who later published *The Dialectic of Sex*, left Chicago for New York, where she was instrumental in forming New York Radical Women.<sup>46</sup> In 1969, that group splintered into several factions, which saw themselves more as part of the new women’s movement than of the New Left.<sup>47</sup> Some reached out to

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<sup>38</sup> *Id.* at 10–11.

<sup>39</sup> *Id.* at 11–13.

<sup>40</sup> *Id.* at 14–15.

<sup>41</sup> *Id.* at 15.

<sup>42</sup> ECHOLS, *supra* note 18, at 136–37.

<sup>43</sup> Strobel & Davenport, *supra* note 33.

<sup>44</sup> *Id.*

<sup>45</sup> EVANS, *supra* note 18, at 230.

<sup>46</sup> SHULAMITH FIRESTONE, *THE DIALECTIC OF SEX: THE CASE FOR FEMINIST REVOLUTION* (1970); HOLE & LEVINE, *supra* note 18, at 115.

<sup>47</sup> HOLE & LEVINE, *supra* note 18, at 136–57 (describing the split between feminist groups in New York City and the emergence of the Redstockings and New York Radical Feminists).

other women's groups and focused on consciousness raising in small groups, but many Left feminists were suspicious of constructing theory from personal experience and feared it might detract from action.<sup>48</sup> Similar developments occurred in Boston, Washington, D.C., Baltimore, Seattle, San Francisco, and other cities.<sup>49</sup> The resulting groups have been classified as "radical feminists" on the one hand, and "politicos" on the other,<sup>50</sup> although any rigid classification is misleading. "Politicos" referred to those committed to the primacy of socialist revolution, while radical feminists focused their efforts on male domination rather than on capitalism as the enemy, although their politics also tended to be Left.

There were several attempts at building a national organization of radical and socialist feminists. Thirty women from different cities' groups met in August 1968 in Sandy Springs, Maryland to debate priorities, ideologies, and action.<sup>51</sup> The underlying question was whether women's groups should remain a branch of the radical Left or split into independent organizations, and opinion was hotly divided.<sup>52</sup> At the first National Women's Liberation Conference, held in Chicago during Thanksgiving 1968, the division between politicos and feminists was apparent, with politicos arguing that women's liberation should remain one part of the movement for international socialist revolution.<sup>53</sup>

By the early 1970s, socialist feminism was clearly a distinct category within the feminist movement. In 1975, a conference on socialist feminism, organized by an Ohio chapter of the New American Movement (NAM), a democratic socialist organization, was held in Yellow Springs, Ohio and attracted 1,500 people.<sup>54</sup> Barbara Ehrenreich delivered a speech called "Socialist/Feminism and Revolution," a version of which was published the

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<sup>48</sup> ECHOLS, *supra* note 18, at 86–87. Many Leftists also saw consciousness-raising groups as a method of raising class consciousness. EVANS, *supra* note 18, at 214; HOLE & LEVINE, *supra* note 18, at 132.

<sup>49</sup> FREEMAN, *supra* note 18, at 106; HOLE & LEVINE, *supra* note 18, at 119–22.

<sup>50</sup> See FREEMAN, *supra* note 18, at 107 ("Proponents became known as 'politicos' or 'feminists' respectively and traded arguments about whether 'capitalism was the enemy,' or the male-dominated social institutions and values."); HOLE & LEVINE, *supra* note 18, at 148 ("Politicos remained committed to the position that the socialist revolution was primary . . . . Whereas radical feminists were beginning to realize that they often had a great deal more in common with women's rights groups and moderate feminists than with politicos, the latter denounced the women's rights group as insidiously destructive of the whole movement."); see also ECHOLS, *supra* note 18, at 51–101 (discussing "The Great Divide: The Politico-Feminist Schism"). A note on terminology: the term "women's liberation" was chosen to echo New Left and anti-imperialist liberation movements and because it was thought not to be as controversial as "feminism." ECHOLS, *supra* note 18, at 53–54.

<sup>51</sup> HOLE & LEVINE, *supra* note 18, at 122.

<sup>52</sup> FREEMAN, *supra* note 18, at 106–07.

<sup>53</sup> HOLE & LEVINE, *supra* note 18, at 130–33.

<sup>54</sup> Gardiner, *supra* note 36, at 570.

following year under the title *What Is Socialist Feminism?*<sup>55</sup> Ehrenreich distinguished socialist feminism both from “mechanical Marxism”<sup>56</sup> and from radical feminism.<sup>57</sup> It was distinct from Marxism, she argued, because socialist feminism saw capitalism as a social and cultural totality, taking in the realm of consumption, supplementing the Marxist focus on production with an analysis of private life and the household economy, and seeing the “woman question” as not simply a part of the superstructure.<sup>58</sup> And it was distinct from radical feminism because socialist feminism did not focus on patriarchy as a universal, ahistorical phenomenon, but instead as an institution particular to industrial capitalism.<sup>59</sup> Freed from the limitations of what Ehrenreich referred to as truncated forms of both Marxism and feminism, socialist feminism could develop a theory and politics that would address “the political/economic/cultural totality of monopoly capitalist society,” including understanding the interconnection between the subjugation of women and the atomization of the working class.<sup>60</sup> In short, combining Marxist and feminist analysis was necessary to understand both capitalist domination and sex oppression. Ehrenreich cautioned, however, that:

Not all women’s struggles have an inherently anticapitalist thrust (particularly not those which seek only to advance the power and wealth of special groups of women), but all those which build collectivity and collective confidence among women are vitally important to the building of class consciousness. Conversely, not all class struggles have an inherently antisexist thrust (especially not those that cling to preindustrial patriarchal values), but all those which seek to build the social and cultural autonomy of the working class are necessarily linked to the struggle for women’s liberation.<sup>61</sup>

Thus, developing socialist feminist theory could provide a way to choose where to focus women’s energies so as to promote both the equality of women and the struggle against capitalism.

No history of socialist feminism in this period would be complete without a description of the activities and contributions of women of color and lesbians. The 1977 Combahee River Collective (CRC) statement provided a good distillation of the perspective added by African American

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<sup>55</sup> Barbara Ehrenreich, *What is Socialist Feminism?*, MONTHLY REV., July–Aug. 2005, at 70. Note that this article was first published in *WIN Magazine* on June 3, 1976. *Id.*

<sup>56</sup> *Id.* at 74 (describing how socialist feminists are different from “mechanical Marxists”).

<sup>57</sup> *Id.* at 72–73 (describing how socialist feminists are different from radical feminists).

<sup>58</sup> *Id.* at 74.

<sup>59</sup> *Id.* at 73.

<sup>60</sup> *Id.* at 75–76.

<sup>61</sup> *Id.* at 76.

women who were also lesbians.<sup>62</sup> This document was drawn up by a group of Black women in the Boston area who formed a separate organization after their disillusionment with the treatment of their issues by white feminists, males within the movement for Black liberation, and the conservative National Black Feminist Organization (NBFO).<sup>63</sup> They named their group after the Combahee River, where a military action led by Harriet Tubman in 1863 freed more than 750 slaves—a successful military campaign led by a Black woman.<sup>64</sup> Having decided that the NBFO was “bourgeois-feminist” and lacked “a clear political focus,” they were approached by socialist feminist groups and sent a representative to the Yellow Springs conference described above.<sup>65</sup> Although the group reported that it was put off by “the narrowness of the ideology that was promoted at that particular conference, we became more aware of the need for us to understand our own economic situation and to make our own economic analysis.”<sup>66</sup> Moreover, although lesbians, the CRC rejected lesbian separatism as cutting them off from the majority of Black men, women, and children.<sup>67</sup> In their 1977 statement, the CRC described the evolution of their thinking: “A combined antiracist and antisexist position drew us together initially, and as we developed politically we addressed ourselves to heterosexism and economic oppression under capitalism.”<sup>68</sup>

The political manifesto that emerged from the study, analysis, and consciousness-raising engaged in by the CRC between 1974 and 1977 stands as an important document in the history both of socialist feminism and of identity politics. The group described its socialism as follows:

We realize that the liberation of all oppressed peoples necessitates the destruction of the political-economic systems of capitalism and imperialism as well as patriarchy. We are socialists because we believe the work must be organized for

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<sup>62</sup> *The Combahee River Collective: A Black Feminist Statement* [hereinafter *Combahee River Statement*], in *CAPITALIST PATRIARCHY AND THE CASE FOR SOCIALIST FEMINISM* 362 (Zillah R. Eisenstein ed., 1979) [hereinafter *CAPITALIST PATRIARCHY*]; see also Duchess Harris, *From the Kennedy Commission to the Combahee Collective*, in *SISTERS IN THE STRUGGLE: AFRICAN AMERICAN WOMEN IN THE CIVIL RIGHTS-BLACK POWER MOVEMENT* 280, 292–301 (Bettye Collier-Thomas & V.P. Franklin eds., 2001) (describing the history of the Combahee River Collective); Barbara Smith, *Doing It from Scratch: The Challenge of Black Lesbian Organizing* (1995), in *THE TRUTH THAT NEVER HURTS: WRITINGS ON RACE, GENDER, AND FREEDOM* 170–72 (2000) (describing the importance of the CRC in organizing Black lesbians).

<sup>63</sup> See *Combahee River Statement*, *supra* note 62, at 368–71 (discussing formation of the CRC). The NBFO was a mainstream Black women’s political organization that existed only from 1973 to 1977. See Harris, *supra* note 62, at 288–90 (describing the NBFO’s work).

<sup>64</sup> Harris, *supra* note 62, at 294.

<sup>65</sup> *Combahee River Statement*, *supra* note 62, at 370.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.* at 367.

<sup>68</sup> *Id.* at 364.

the collective benefit of those who do the work and create the products and not for the profit of the bosses. Material resources must be equally distributed among those who create these resources. We are not convinced, however, that a socialist revolution that is not also a feminist and antiracist revolution will guarantee our liberation. We have arrived at the necessity for developing an understanding of class relationships that takes into account the specific class position of black women who are generally marginal in the labor force . . . . Although we are in essential agreement with Marx's theory as it applied to the very specific economic relationships he analyzed, we know that this analysis must be extended further in order for us to understand our specific economic situation as black women.<sup>69</sup>

In short, the CRC's feminist and anti-racist analysis brought them to socialism, but it also led them to what this group may have been the first to name "identity politics."<sup>70</sup> Their reasons for adopting such an approach were pragmatic as well as theoretical: "We believe that the most profound and potentially the most radical politics come directly out of our own identity, as opposed to working to end somebody else's oppression."<sup>71</sup> Thus the CRC's focus was on its members' identities as Black women and lesbians, but they worked in alliances with other groups to address issues that were of common interest, such as violence against women, daycare, welfare, sterilization abuse, abortion rights, and healthcare.<sup>72</sup>

Other groups that were self-consciously socialist feminist in orientation also sought to identify political activities that reflected these understandings. At an all-day conference in March 1977, for example, Marxist feminist groups in New York City came together to share their ideas about socialist feminism and its political potential. The issue attracting most interest for future work was reproductive politics, and especially a campaign against sterilization abuse, which was seen as having possibilities for integrating questions of sex, race, and class and building alliances with other groups of women.<sup>73</sup> Although it never became a broad inter-racial alliance during its short life, the group that organized around these goals, the Committee for Abortion Reform and Against Sterilization Abuse (CARASA) did succeed

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<sup>69</sup> *Id.* at 366.

<sup>70</sup> See Harris, *supra* note 62, at 300 (describing the emergence of the term "identity politics" in the 1980s and 1990s).

<sup>71</sup> *Combahee River Statement*, *supra* note 62, at 365.

<sup>72</sup> See *id.* at 371 (outlining the issues that the CRC focused on); see also Harris, *supra* note 62, at 297–99 (describing the CRC and community activism).

<sup>73</sup> Rosalind Petchesky, *Dissolving the Hyphen: A Report on Marxist-Feminist Groups 1-5, in* CAPITALIST PATRIARCHY, *supra* note 62, at 373, 375.



in focusing attention on the high rate of sterilization of Puerto Rican and Native American women without their consent, resulting in the passage of federal regulations to require informed consent to sterilization.<sup>74</sup>

By the late 1970s, however, socialist feminist groups had evaporated. A number of explanations for their disappearance have been offered. Jo Freeman argues that their dedication to an anti-hierarchical structure contributed to their demise, as women who emerged as leaders were attacked as elitists and the groups' lack of structure made them ineffective and easy targets for infiltration, for example, by the Trotskyist Socialist Workers Party (SWP).<sup>75</sup> The CWLU, whose members had a strong background in the Left, recognized this threat and forced out the SWP in 1970–1971.<sup>76</sup> The sectarianism that took over, and destroyed, the New Left in the mid-1970s posed a much more serious threat. According to some observers, “between the years 1975 and 1977 Marxist-Leninist and Maoist groups virtually destroyed the flourishing network of socialist-feminist unions.”<sup>77</sup> Judith Kegan Gardiner, a CWLU participant who was a founder of the women's studies program at the University of Illinois at Chicago, has reevaluated this history more recently, and agrees with this assessment.

[T]he end of the women's liberation unions was a result of “trashing,” or deliberately destructive tactics, by small groups of well-trained, self-identified Maoists . . . . In a few years, sectarian Maoists simultaneously destroyed socialist feminist women's liberation unions from Los Angeles to Chicago to Boston . . . .<sup>78</sup>

Based on her research, Gardiner believes that the sudden death of women's organizations from 1975 to 1977 was ultimately due to government intervention: “I now think . . . that these supposed Maoists were themselves or were influenced by FBI provocateurs.”<sup>79</sup> Ruth Rosen, who did extensive research into FBI files, documents the COINTELPRO monitoring of the women's movement.<sup>80</sup> Although she believes that the resulting

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<sup>74</sup> See U.S. WOMEN'S INTEREST GROUPS: INSTITUTIONAL PROFILES 131–34 (Sarah Slavin ed., 1995) (discussing CARASA); see also LINDA GORDON, THE MORAL PROPERTY OF WOMEN: A HISTORY OF BIRTH CONTROL POLITICS IN AMERICA 345–46 (rev. ed. 2002) (discussing the movement against sterilization abuse).

<sup>75</sup> See FREEMAN, *supra* note 18, at 119–21 (describing the problems of structurelessness); see also HOLE & LEVINE, *supra* note 18, at 163 (“Precisely because the movement is so formless and some groups are often self-consciously structureless, it seemed to be relatively easy for a tightly-knit organized group to infiltrate.”).

<sup>76</sup> FREEMAN, *supra* note 18, at 131.

<sup>77</sup> See ECHOLS, *supra* note 18, at 137 (quoting Barbara Ehrenreich).

<sup>78</sup> Gardiner, *supra* note 36, at 572.

<sup>79</sup> *Id.* at 560, 572.

<sup>80</sup> ROSEN, *supra* note 18, at 241–52. COINTELPRO was a secret FBI program set up to monitor, discredit, infiltrate, and attempt to disrupt domestic dissident groups. See FINAL REPORT OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, S.

paranoia bred dissensus within the groups, she argues that it only exacerbated self-destructive tendencies and splits already developing within the movement.<sup>81</sup>

Whatever the causes—and they include the end of the Vietnam War and antiwar activism, splits between gay and straight feminist groups, and a more general backlash against both feminism and Left activism<sup>82</sup>—socialist feminist groups no longer existed in the United States by the end of the 1970s. They left an important heritage, however, in the women's studies programs established in American universities, women's caucuses within various professional disciplines, and scholars who developed socialist feminist theory.<sup>83</sup> In 1971, there were fifteen women's studies programs at U.S. universities; by 1975, there were 152, and many of these programs were strongly socialist feminist in orientation.<sup>84</sup> The annual meeting of the National Women's Studies Association, founded in 1977, also attracted a significant number of socialist feminists, who caucused at the conference.<sup>85</sup> Scholars from various disciplines—anthropology, political science, philosophy, and economics among them—began to do serious work developing the theory of socialist feminism.<sup>86</sup> The next section describes the socialist feminist theory they developed.

### C. *The Development of Socialist Feminist Theory in the 1970s and 1980s*

The theoretical works I consider the “classics” of socialist feminist theory in the United States were produced in a relatively brief period between 1975 and 1983. They were influenced by earlier work done in England and Canada by Juliet Mitchell, Sheila Rowbotham, and Margaret Benston. In this Section, I first discuss the work of these three women and then proceed to describe that of the following American theorists: Heidi Hartmann, Zillah Eisenstein, Iris Young, Nancy Hartsock, and Alison Jaggar. Other scholars in a variety of disciplines were exploring this type of analysis during this period, but I have chosen these five women to illustrate the classical socialist feminist canon in the United States. This literature was

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REP. NO. 94-755, at 5–18 (1976) (summarizing problematic domestic intelligence activity in a report that has come to be known as the “Church Committee Report”).

<sup>81</sup> ROSEN, *supra* note 18, at 259–60.

<sup>82</sup> See, e.g., EVANS, *supra* note 18, at 223–25 (describing the fragmentation, obstacles, and defeats that the women's movement encountered); FREEMAN, *supra* note 18, at 142–44 (describing the same); Gardiner, *supra* note 36, at 575, 578 (describing the conservative backlash).

<sup>83</sup> See, e.g., EVANS, *supra* note 18, at 216–17 (describing development of women's studies programs, professional caucuses, and scholarly research).

<sup>84</sup> Gardiner, *supra* note 36, at 567–69.

<sup>85</sup> *Id.* at 571.

<sup>86</sup> Rayna Rapp (anthropology), Rosalind Petchesky, Zillah Eisenstein, and Iris Young (political science), Nancy Hartsock and Alison Jaggar (philosophy), and Heidi Hartmann (economics), to name just a few.

only the tip of the iceberg, however, as many other theorists and activists made creative use of socialist feminism in their work. I illustrate this point below with the work of Silvia Federici and the “wages for housework” movement.

### 1. *The Influence of British Theorists*

It is not surprising that socialist feminist theory would first take root in Great Britain, given that country’s tradition of socialist and radical politics.<sup>87</sup> Both Juliet Mitchell and Sheila Rowbotham came out of Left political backgrounds.<sup>88</sup> Yet the first women’s liberation conference was not held in Britain until February 1970, at Oxford—relatively late by U.S. standards.<sup>89</sup> Those who gathered there were familiar with Marxist theory but, unlike their sisters in the U.S., did not come out of movement politics; they were familiar with the civil rights and antiwar movements only from afar.<sup>90</sup> However, the student protests of 1968 had spread to the United Kingdom.<sup>91</sup> Sheila Rowbotham also writes of “rumors” from the U.S. and Germany during that year which drew the attention of women on the Left in the U.K.—rumors of feminist protests in the U.S. and of women’s issues noisily raised among Marxist theorists in Germany.<sup>92</sup> In short, the origins of socialist feminism were genuinely cross-national.

As early as 1966, Juliet Mitchell, at that time a professor of English literature (she later became a psychoanalyst), published the first work that spread quickly across the Atlantic—an article called *The Longest Revolution*.<sup>93</sup> She expanded upon the themes she developed in that article in

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<sup>87</sup> See Rosalyn Baxandall, *Introduction to the U.S. Edition*, in SHEILA ROWBOTHAM ET AL., BEYOND THE FRAGMENTS: FEMINISM AND THE MAKING OF SOCIALISM x-xii (1981) [hereinafter BEYOND THE FRAGMENTS] (describing differences between politics and feminism in the United States and Britain).

<sup>88</sup> See JULIET MITCHELL, WOMEN: THE LONGEST REVOLUTION: ESSAYS ON FEMINISM, LITERATURE AND PSYCHOANALYSIS ix (Virago 1984) (1966) [hereinafter MITCHELL, WOMEN: THE LONGEST REVOLUTION] (“I was actively involved in politics, first in Marxist politics around the *New Left Review* and then in the feminism of the Women’s Liberation Movement.”); SHEILA ROWBOTHAM, WOMAN’S CONSCIOUSNESS, MAN’S WORLD 17–20 (1973) (describing Rowbotham’s exploration of Marxism and socialism); Sheila Rowbotham, *The Women’s Movement and Organizing for Socialism*, in BEYOND THE FRAGMENTS, *supra* note 87, at 21–38 (describing the main political influences on Rowbotham’s thought).

<sup>89</sup> Sheila Rowbotham, *Appreciating Our Beginnings*, in THE SOCIALIST FEMINIST PROJECT: A CONTEMPORARY READER IN THEORY AND POLITICS 260 (Nancy Holmstrom ed., 2002) [hereinafter SOCIALIST FEMINIST PROJECT].

<sup>90</sup> *Id.* at 263.

<sup>91</sup> *Id.* at 262.

<sup>92</sup> *Id.*

<sup>93</sup> Juliet Mitchell, *Women: The Longest Revolution*, 40 NEW LEFT REV. 11 (1966). Mitchell also included the article in her 1966 book entitled *Women: The Longest Revolution*, *supra* note 88, but the remainder of that the book was about literature and psychoanalysis. MITCHELL, WOMEN: THE LONGEST REVOLUTION, *supra* note 88.

a subsequent book, *Woman's Estate*, published in 1971.<sup>94</sup> Mitchell pointed to the failure of Marxist theory and contemporary socialism to analyze the subordination of women, concluding that they were blinded by economism—an exclusive focus on economic factors to the neglect of other influences.<sup>95</sup> The way to address this problem, she concluded, was to analyze the condition of women in four separate spheres that formed what she called a complex unity: production, reproduction, sex, and the socialization of children.<sup>96</sup> Women's liberation would be achieved, she argued, only by the transformation of all four structures; reforms in one sphere would otherwise be offset by changes in another, as had happened in the Soviet Union and the People's Republic of China.<sup>97</sup> For example, if women are incorporated into the process of production in the economy on an equal basis with men but the division of labor in the domestic sphere is not reorganized or socialized, they may be worse off than before the changes in one sphere. Thus, although the entry of women into the workforce should remain a key goal, it must be accompanied by changes in family structure and sexuality in order to genuinely emancipate women.<sup>98</sup> These insights were cited, critiqued, and developed by Heidi Hartmann, Zillah Eisenstein, and Iris Young in the United States.<sup>99</sup>

In *Woman's Estate*, published in 1971, Mitchell supplemented this analysis by beginning to incorporate the insights of both psychoanalysis and radical feminism.<sup>100</sup> By then, the American feminist activist Shulamith Firestone had published *The Dialectic of Sex* in 1970, in which she attributed the subordination of women to the biological division of the sexes and called for abolition of the family, artificial reproduction, and the obliteration of sex roles in general.<sup>101</sup> Mitchell agreed with both Freud and Firestone that the family was the source of the psychic creation of individuals and that the current family structure was incompatible with equality of the sexes, but she argued that some sort of socially recognized family-like structure remained

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<sup>94</sup> JULIET MITCHELL, *WOMAN'S ESTATE* (1971) [hereinafter MITCHELL, *WOMAN'S ESTATE*].

<sup>95</sup> MITCHELL, *WOMEN: THE LONGEST REVOLUTION*, *supra* note 88, at 13–15.

<sup>96</sup> *Id.* at 16–17, 30–33.

<sup>97</sup> *Id.* at 29.

<sup>98</sup> *Id.* at 34–36.

<sup>99</sup> See, e.g., Zillah Eisenstein, *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*, 25 *CRITICAL SOC.* 196, 206–07 (1999); Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in *THE UNHAPPY MARRIAGE OF MARXISM AND FEMINISM: A DEBATE OF CLASS AND PATRIARCHY 2* (Lydia Sargent ed., 1981) [hereinafter *UNHAPPY MARRIAGE*] (orig. pub'd 1977 in 7(3) *THE INSURGENT SOCIOLOGIST* 3–17 (Summer 1977)); Iris Young, *Beyond the Unhappy Marriage: A Critique of the Dual Systems Theory*, in *UNHAPPY MARRIAGE*, *supra*, at 46.

<sup>100</sup> MITCHELL, *WOMAN'S ESTATE*, *supra* note 94.

<sup>101</sup> FIRESTONE, *supra* note 46, at 12, 205–42. On Firestone's activism within the United States women's movement, see *supra*, note 30.

necessary.<sup>102</sup> Mitchell continued with her project to reconcile the insights of psychoanalysis and feminism in her later book, *Psychoanalysis and Feminism*.<sup>103</sup>

After *The Longest Revolution*, and influenced by it, the next article to take American socialist feminists by storm was *The Political Economy of Women's Liberation*, written by a Canadian chemistry professor, Margaret Benston, and published in 1969.<sup>104</sup> Benston agreed with Mitchell that women's subordinate status had economic roots that Marxists had ignored, from which personal and psychological factors followed.<sup>105</sup> Women, she defined, were "that group of people who are responsible for the production of simple use-values in those activities associated with the home and family," but their work, however productive, was disregarded because it was outside the money economy.<sup>106</sup> Benston pointed to how the nuclear family—and women—functioned as a stabilizing force in capitalism, not only because women performed household work for free, but also because they functioned as an ideal consumption unit and a reserve army of labor.<sup>107</sup> The only route to the liberation of women, therefore, would be the communalization of housework by the provision of nurseries and social responsibility for children in general, communal eating facilities, laundries, and the like.<sup>108</sup>

Sheila Rowbotham, an academic historian in the U.K., also influenced the development of socialist feminist theory in the United States. In 1972 she published a book titled *Women, Resistance and Revolution*, which discussed the experience of women in various revolutionary movements from the seventeenth century to the twentieth century.<sup>109</sup> Although that book was widely read, the book that had most influence on the development of socialist feminism was her slim volume, *Woman's Consciousness, Man's*

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<sup>102</sup> MITCHELL, WOMAN'S ESTATE, *supra* note 94, at 171; MITCHELL, WOMEN: THE LONGEST REVOLUTION, *supra* note 88, at 36–37.

<sup>103</sup> JULIET MITCHELL, PSYCHOANALYSIS AND FEMINISM: FREUD, REICH, LAING AND WOMEN (1974).

<sup>104</sup> Margaret Benston, *The Political Economy of Women's Liberation*, 21 MONTHLY REV. 13 (1969). On the influence of Benston's article among socialist feminists in the United States, see Boxer, *supra* note 14, at 145 and ROSEMARIE TONG, FEMINIST THOUGHT: A COMPREHENSIVE INTRODUCTION 53–54 (1989).

<sup>105</sup> Benston, *supra* note 104, at 13–14.

<sup>106</sup> *Id.* at 16.

<sup>107</sup> *Id.* at 19–21.

<sup>108</sup> *Id.* at 22.

<sup>109</sup> SHEILA ROWBOTHAM, WOMEN, RESISTANCE & REVOLUTION: A HISTORY OF WOMEN AND REVOLUTION IN THE MODERN WORLD (1972). Rowbotham was active earlier, having published an influential pamphlet called *Women's Liberation and the New Politics* in 1969, in which she argued that socialist theory should analyze the oppression of women in cultural as well as economic terms. Sheila Rowbotham, *Women's Liberation and the New Politics*, in MAY DAY MANIFESTO, PAMPHLET NO. 4, 29–30 (1969).

*World*, which came out in 1973.<sup>110</sup>

In *Woman's Consciousness, Man's World*, Rowbotham argued that liberal equal rights feminism had reached the limit of its capacity to improve women's lot, which required not just legal changes but also a transformation of the world of production and the worlds of family and sexuality; Marxists had failed to recognize the importance of the latter spheres of life.<sup>111</sup> The solution, she proclaimed, was "communism, despite the hollow resonance the word has acquired."<sup>112</sup> To achieve emancipation for women would require not only a revolution in the way the economy was organized but also a form of collective consciousness-raising, by which women could create an alternative image of themselves and their role in society.<sup>113</sup> To achieve this, it was important to study how

little girls perceive themselves in particular families in particular forms of society . . . [especially] the process through which the family serves to communicate and reinforce the prevailing values of capitalist society . . . the delicate manner in which human beings stifle and define one another at the point of reproduction.<sup>114</sup>

Because the use of women's unpaid labor in the home was essential to the structure and organization of the market, it was necessary to study all these relationships and to develop notions of an alternative society.<sup>115</sup> Key questions for this study would be:

- What is the nature of women's production in the family and how is this reproduced in consciousness?
- How does the demand for women's labor in commodity production and the type of work they do in industry affect the consciousness of women?
- What are the ways in which capitalism is undermining the traditional contained sphere it has allotted to women . . . and what political consequences do these have?<sup>116</sup>

An antagonism between men and women was built into capitalism's organization of work, Rowbotham argued, with the family and sexuality not only serving as safety valves but also transmitting the world of work and consumption patterns particular to capitalism.<sup>117</sup> Women were socialized to perform these functions and to socialize children as well, so as to provide

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<sup>110</sup> ROWBOTHAM, *WOMAN'S CONSCIOUSNESS, MAN'S WORLD*, *supra* note 88.

<sup>111</sup> *Id.* at xiv–xv.

<sup>112</sup> *Id.* at xvi.

<sup>113</sup> *Id.* at 27–29.

<sup>114</sup> *Id.* at 31–32.

<sup>115</sup> *Id.* at 68–70, 82–83, 101.

<sup>116</sup> *Id.* at 66.

<sup>117</sup> *Id.* at 53, 57.

new workers and a market for capitalism.<sup>117</sup> As a result, without major transformation of both spheres—the household and the economy—gender equality was impossible. Individual reforms, without understanding their relationship to the structure of male-dominated capitalism, would simply result in a bigger share of the cake for women and “create gradations among the underprivileged.”<sup>118</sup>

By 1974, Herbert Marcuse, Frankfurt School critical theorist and philosopher-guru of the New Left (perhaps influenced by his long-term student, Angela Davis<sup>119</sup>), gave his imprimatur to the socialist feminist approach as the socialism of the future. In a 1974 speech, he stated,

[T]he very goals of this [Women’s Liberation] Movement require changes of such enormity in the material as well as intellectual culture that they can be attained only by a change in the entire social system. By virtue of its own dynamic, the Movement is linked with the political struggle for revolution, freedom for men *and* women.<sup>120</sup>

Thus the emancipation of women, Marcuse thought, would prove to be a decisive force in the construction of socialism as a qualitatively different society, free of the masculine qualities of Marxist socialism; the way to this future was through socialist feminism.<sup>121</sup>

## 2. *Heidi Hartmann and The Unhappy Marriage of Marxism and Feminism*

The first major work in the canon I am constructing of the classic works of socialist feminism in the United States was written by Heidi Hartmann, an economist. Drafts of *The Unhappy Marriage of Marxism and Feminism*, co-authored by Amy Bridges, were circulated in 1975 and 1977, and the essay was subsequently published in a book of the same name in 1981.<sup>122</sup> Hartmann agreed with other socialist feminists that the problem with Marxist theory was its sex-blindness but pointed to recent work by Marxist theorists attempting to remedy this gap by focusing on housework.<sup>123</sup>

<sup>117</sup> *Id.* at 106.

<sup>118</sup> *Id.* at 122–23.

<sup>119</sup> Angela Davis was a student of Marcuse both as an undergraduate at Brandeis and as a doctoral student at the University of California at San Diego. THE ANGELA Y. DAVIS READER 3 (Joy James ed., 1998). Davis herself was a much more doctrinaire Marxist than the New Left socialist feminists described in this article and was an active member of the United States Communist Party for twenty-three years. *Id.* at 8–10; see also *id.* at 161–92 (demonstrating Davis’s orthodox Marxist analysis about the oppression of women).

<sup>120</sup> Herbert Marcuse, *Marxism and Feminism*, 2 WOMEN’S STUD. 279 (1974), reprinted in 17 DIFFERENCES: J. FEMINIST CULTURAL STUD. 147, 149 (2006).

<sup>121</sup> *Id.* at 149–54.

<sup>122</sup> UNHAPPY MARRIAGE, *supra* note 99, at 2.

<sup>123</sup> *Id.* at 5–9 (discussing, for example, the work of Eli Zaretsky and Mariarosa Dalla Costa).

Crediting both Juliet Mitchell and Shulamith Firestone, Hartmann's plea was to take from Marx his method of analysis, historical dialectical materialism, and to use it to examine the status of women.<sup>124</sup> The material base of patriarchy, she argued, was "men's control over women's labor power."<sup>125</sup> Under advanced capitalism, male workers and capitalists had struck a bargain based on the family wage, that is, a wage paid to males that was sufficient to support a whole family, while accepting lower wages for women and persons of color.<sup>126</sup>

Segregating women into lower-paying jobs required them to be economically dependent on men, and their responsibilities in the home reinforced their inferior labor market position.<sup>127</sup> Women's lower wages and the need to care for children thus assured the "continued existence of the family as a necessary income pooling unit[.]" one that also functioned well as a consumption unit.<sup>128</sup> In short, Hartmann brought her skills as an economist to the analysis of a thoroughly materialist base for women's oppression. At the same time, she indicated the need, as radical feminists had emphasized, to understand the psychology underlying individuals' acceptance of the current system, to study the subconscious and learn how rules were internalized and grew out of personality structure.<sup>129</sup> The weakness of radical feminist analysis, however, in Hartmann's opinion, was its focus on discontent in the individual psyche and its ahistorical theory of patriarchy.<sup>130</sup> Neither socialist nor radical feminist analysis was adequate alone, she thought, because patriarchal power and capitalist organization were so intertwined; only a dual analysis was equal to understanding their interrelationship and bringing about a society in which women would genuinely be equal to men:<sup>131</sup> "A struggle aimed only at capitalist relations of oppression will fail, since their underlying supports in patriarchal relations will be overlooked. And the analysis of patriarchy is essential to a definition of the kind of socialism useful to women."<sup>132</sup>

A later scholar classified Hartmann's work as "Dual Systems Theory – type 2" because Hartmann's theory presented materialist accounts of both patriarchy and capitalism ("type 1" being represented by Juliet Mitchell, with her combination of a materialist account of capitalism and a non-materialist, psychoanalytic account of the family and patriarchy).<sup>133</sup> As is

<sup>124</sup> *Id.* at 11.

<sup>125</sup> *Id.* at 15.

<sup>126</sup> *Id.* at 21–22.

<sup>127</sup> *Id.* at 22. Hartmann developed her analysis of the role of job segregation in this process in her 1976 essay, *Capitalism, Patriarchy, and Job Segregation by Sex*, 1 *SIGNS* 137, 138 (1976) [hereinafter *Job Segregation*].

<sup>128</sup> *UNHAPPY MARRIAGE*, *supra* note 99, at 25.

<sup>129</sup> *Job Segregation*, *supra* note 127, at 168–69.

<sup>130</sup> *UNHAPPY MARRIAGE*, *supra* note 99, at 13–14.

<sup>131</sup> *Id.* at 32; *Job Segregation*, *supra* note 127, at 168.

<sup>132</sup> *UNHAPPY MARRIAGE*, *supra* note 99, at 32.

<sup>133</sup> *TONG*, *supra* note 104, at 175–81.



relevant to the intellectual history reconstructed here, Hartmann's work in the mid-1970s initiated the theoretical exploration of socialist feminism on this side of the Atlantic and served as an invitation for other scholars to develop this analytical approach.

### 3. *Zillah Eisenstein and Dual Systems Theory*

The best exposition of dual systems theory by an American socialist feminist author, in my opinion, was presented by the political theorist Zillah Eisenstein. In her article *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*, originally published in 1977, Eisenstein described socialist feminism as a theory emerging dialectically as the synthesis of Marxist analysis and radical feminism, each of which were incomplete but valuable analyses.<sup>134</sup> Marxism, the thesis, did not examine relations of reproduction in its analysis of the division of labor under capitalism, instead simply assuming that the emancipation of women would follow when they were involved in large-scale production and domestic work took an insignificant amount of time.<sup>135</sup> Radical feminism, the antithesis, saw the biological family and sex roles as central.<sup>136</sup> Socialist feminism, Eisenstein argued, was the dialectical synthesis of the two, capable of analyzing the mutual dependence of the spheres of production and reproduction, as well as understanding both the material form of the sexual division of labor and its ideological component.<sup>137</sup>

Eisenstein described the current economic and social system as what she called "capitalist patriarchy," a mutually interdependent system;<sup>138</sup> she later refined this definition to include that it was "an hierarchical, exploitative, oppressive system [that] requires racial oppression alongside sexual and class oppression."<sup>139</sup> Borrowing Juliet Mitchell's categories of production, reproduction, sexuality, and socialization of children, Eisenstein proceeded to argue that the family supported capitalism in the following ways:

1. Women stabilize patriarchal structures by fulfilling their roles as wife and mother;
  2. Women reproduce new workers and care for both male workers and their children;
  3. Women work in the labor force for lower wages than men;
- and

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<sup>134</sup> Eisenstein, *supra* note 99, at 197–203.

<sup>135</sup> *Id.* at 199–201.

<sup>136</sup> *Id.* at 201–03.

<sup>137</sup> *Id.* at 203–06.

<sup>138</sup> *Id.* at 196.

<sup>139</sup> *Some Notes on the Relations of Capitalist Patriarchy*, in *CAPITALIST PATRIARCHY*, *supra* note 62, at 41, 46.

4. Women stabilize the economy through their role as consumers.<sup>140</sup>

In this way, capitalism makes use of patriarchy, and modern-day patriarchy is defined by the needs of capital. As a result, not only do the owners of capital profit, but all individual men also reap substantial benefit.<sup>141</sup>

The symbiotic relationship between the two systems, however, is inevitably threatened by challenges to the sexual division of labor.<sup>142</sup> The seeds of change are contained in the contradictions in the lives of women, between the demands made upon them by their role in production and the demands made upon them by their husbands and children.<sup>143</sup> In this respect, women become a dynamic force for change as they struggle with the increasingly intolerable conditions of their daily lives.<sup>144</sup>

What political program emerges from this analysis? First, according to Eisenstein, it was necessary to perform a feminist class analysis, classifying groups of women by the work they do within the economy as a whole, whether as housewives, unemployed, working class, professional, or wealthy non-working women, and to relate these classifications to their activities with respect to reproduction, child rearing, home maintenance, sexuality, and consumption, resulting in a much more complex class analysis of women.<sup>145</sup> Writing about strategies for political work, Eisenstein concluded that the best way to build a unified movement was to reach out to liberal feminists and radicalize them by working together around issues such as daycare, health, and reproduction.<sup>146</sup> Liberal feminists were highly motivated because these issues were central to improving their own lives, but they did not yet understand that the equality they sought would require dismantling capitalism.<sup>147</sup> In other words, socialist feminists should address the consciousness of liberal feminist allies by pushing the demand for equal opportunity and demonstrating that it was impossible to attain within the current system.<sup>148</sup> Much more could be gained politically by pursuing this alliance, Eisenstein argued, than by continuing a dialogue with Marxists and other small groups; it was easier to teach liberals to see the patriarchal and class base of liberalism than to try to teach Marxists about patriarchy as the

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<sup>140</sup> Eisenstein, *supra* note 99, at 206–07, 210–11.

<sup>141</sup> *Id.* at 208, 211.

<sup>142</sup> *Id.* at 211.

<sup>143</sup> *Id.* at 209.

<sup>144</sup> *Id.* at 213.

<sup>145</sup> Eisenstein represents this more complex analysis with a grid. *Id.* at 211–13.

<sup>146</sup> Zillah Eisenstein, *Reform and/or Revolution: Towards a Unified Women's Movement*, in UNHAPPY MARRIAGE, *supra* note 99, at 339, 342–43.

<sup>147</sup> *Id.* at 344.

<sup>148</sup> *Id.* at 348.

structural base of capitalism.<sup>149</sup>

Eisenstein developed this argument, set against a background of the history of liberal feminist political theory, in a subsequent book, *The Radical Future of Liberal Feminism*, published in 1981.<sup>150</sup> Now that capitalism apparently required the majority of women to enter the paid labor force in order to survive economically, the ideologies of patriarchy and capitalism had come into conflict; the seeds of revolutionary change lay in the developing consciousness of the contradictions between patriarchal family relations and the needs of the capitalist economy.<sup>151</sup> Constraints upon women's success in the market, combined with the double day (or "second shift," as it came to be called), would result in women coming to realize their second-class status, and to do so across lines of race and class.<sup>152</sup> Also, feminism's concept of a collective condition—that all women are oppressed by the patriarchy—challenges the individualism of liberalism. Socialist feminist politics should be constructed on these premises.

The role of the contemporary capitalist patriarchal state, Eisenstein argued, was to contain or deflect the subversive potential of this new consciousness, either by negotiating conflicting demands or obfuscating them ideologically.<sup>153</sup> Yet the state's ability ultimately to negotiate, balance, and contain these contradictions was limited because they were fundamentally irreconcilable; capitalism could not or would not afford the kinds of reforms necessary for women's equality, such as universal healthcare, childcare, and the like, and there were conflicts both within the state and within the capitalist class about key issues such as reproductive freedom.<sup>154</sup> Legal reforms had a potentially contradictory impact in this situation, possibly "buying off" some women by giving them limited gains, but at the same time raising their consciousness by the contrast between their difficult and incomplete successes and the official ideology of equal opportunity.<sup>155</sup>

The role of law in this process was a central one. Law in the United States both organizes and regulates gender relations, Eisenstein argued, based on its liberal individualist underpinnings and its distinction of the private from the public sphere.<sup>156</sup> She illustrated these propositions by discussing the impact of law at the time when she was writing—the largely symbolic (and ultimately unachieved) promise of the Equal Rights

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<sup>149</sup> *Id.* at 341.

<sup>150</sup> ZILLAH R. EISENSTEIN, *THE RADICAL FUTURE OF LIBERAL FEMINISM* (1981) [hereinafter *RADICAL FUTURE*].

<sup>151</sup> *Id.* at 204–06.

<sup>152</sup> *Id.* at 210–13.

<sup>153</sup> *Id.* at 220–28.

<sup>154</sup> *Id.* at 224–27.

<sup>155</sup> *Id.* at 222.

<sup>156</sup> *Id.* at 223, 228.

Amendment, the Supreme Court's denial that discrimination against women was based on sex (the *Feeney* case) and that pregnancy was a sex-based rather than gender-neutral classification (*Geduldig*), and its assertion that women had a "right" to an abortion even if they lacked the means to pay for it (*Harris v. McRae*).<sup>157</sup> In short, Eisenstein attempted to construct a socialist feminist theory of the state and law, upon which a strategy for political action could be based.

#### 4. *Iris Young and Unified Systems Theory*

Iris Young, a philosopher, criticized both Hartmann and Eisenstein for positing two distinct structures, one to account for patriarchy and one for economic relations.<sup>158</sup> Any theory that ceded the analysis of material social relations to Marxism, she thought, was inadequate; the aim instead should be to transform Marxism into a theory in which gender was a core attribute.<sup>159</sup> The way to do this, she proposed, was to replace the gender-blind category of class with the division of labor as a central category, to which gender division was fundamental.<sup>160</sup> A gender division analysis would enable an account of women's status under capitalism as a function of the structure and dynamics of capitalism itself, showing that the secondary labor force provided by women was an essential characteristic of capitalism and gave men an historically specific type of privilege.<sup>161</sup>

Reworking her essay in 1990, Young emphasized that dual systems theory was a major theoretical advance over traditional Marxist analysis about women and had contributed to revitalization of the Marxist method, but it was still inadequate because it simply grafted a theory of gender relations onto Marxism, which remained dominant.<sup>162</sup> In addition, the separation of production from reproduction, as in many dual systems theories, reinforced liberalism's separate spheres model, with its public (male) and private (female) spheres, which feminists should not accept, and dual systems theory did not account for sexism in the workplace.<sup>163</sup> Young's

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<sup>157</sup> *Id.* at 232–41; see also *Harris v. McRae*, 448 U.S. 297, 315 (1980) (holding that denial of federal funding of abortions under Medicaid does not violate equal protection because it places no governmental obstacle in the path of a woman seeking an abortion); *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 275 (1979) (holding that preference for veterans in state employment is not sex discrimination because it was not intended to discriminate against women although it has that impact); *Geduldig v. Aiello*, 417 U.S. 484, 496–97 (1974) (holding that state disability plan covering all but pregnancy-related disabilities does not constitute sex discrimination).

<sup>158</sup> Iris Young, *Socialist Feminism and the Limits of Dual Systems Theory*, in IRIS MARION YOUNG, *THROWING LIKE A GIRL AND OTHER ESSAYS IN FEMINIST PHILOSOPHY AND SOCIAL THEORY* 23 (1990) [hereinafter *THROWING LIKE A GIRL*].

<sup>159</sup> Young, *supra* note 99, at 49–50.

<sup>160</sup> *Id.* at 50–56.

<sup>161</sup> *Id.* at 58, 61.

<sup>162</sup> *THROWING LIKE A GIRL*, *supra* note 158.

<sup>163</sup> *Id.* at 27–28; see also TONG, *supra* note 104, at 182–83.

concerns were not only that gender issues not be segregated within the larger anti-capitalist movement but also that feminists remain committed to the practical unity of the struggle against capitalism and the liberation of women.<sup>164</sup> Political work based on socialist feminism could do this:

By socialist feminist politics I mean the following: a socialist movement must pay attention to women's issues and support the autonomous organization of women in order to succeed, and all socialist organizing should be conducted with a feminist consciousness; and feminist struggle and organizing should be anticapitalist in its thrust and should make explicit connections between the oppression of women and other forms of oppression.<sup>165</sup>

Moreover, "socialist feminists," Young said, "take as a basic principle that feminist work should be anticapitalist in its thrust and should link women's situation with the phenomena of racism and imperialism."<sup>166</sup> The emphasis she placed on the tie to racism was also a focus of other theorists discussed above. Like Zillah Eisenstein,<sup>167</sup> Iris Young was convinced that the struggles against racism and sexism were linked.

#### 5. *Nancy Hartsock and Perspective Theory*

The socialist feminist philosopher Nancy Hartsock also contributed an essay to the 1979 volume edited by Zillah Eisenstein, *Capitalist Patriarchy and the Case for Socialist Feminism*, focusing on how feminist theory could contribute to the development of revolutionary strategy.<sup>168</sup> Socialist feminist work, she argued, should focus both on personal life and social institutions, with an aim of creating a new society and new individuals with characteristics opposed to the capitalist concept of the individual.<sup>169</sup> Of particular concern for feminists was the nature of class. Class distinctions under capitalism, Hartsock pointed out, affected women and persons of color in different ways than they did the male workers upon whom the Marxist theory of class was based, and class differences among women had consequences for everyday life that must be taken into account in political organizing.<sup>170</sup>

By 1983, Hartsock had begun to develop the concept of a specifically

<sup>164</sup> *THROWING LIKE A GIRL*, *supra* note 158, at 30; Young, *supra* note 99, at 64.

<sup>165</sup> *THROWING LIKE A GIRL*, *supra* note 158, at 21–22.

<sup>166</sup> *Id.* at 32.

<sup>167</sup> See *supra* text accompanying note 139.

<sup>168</sup> Nancy Hartsock, *Feminist Theory and the Development of Revolutionary Strategy*, in *CAPITALIST PATRIARCHY*, *supra* note 62, at 56.

<sup>169</sup> *Id.* at 60–62.

<sup>170</sup> *Id.* at 68–71 (describing, among other things, the differential verbal abilities and confidence of middle- and working-class women).

feminist historical materialism—one that would take over Marx's method but expand his theory "that socially mediated interaction with nature in the process of production shapes both human beings and theories of knowledge."<sup>171</sup> Accordingly, the differences between the activities of women and men had significant consequences for epistemology.<sup>172</sup> The perspective of male workers under capitalism was formed by their participation in the production of commodities for exchange and led to the dualist, abstract, and hierarchical thinking characteristic of that society.<sup>173</sup> Women, by contrast, spent a larger part of their work time producing use-values rather than commodities for exchange, and their lives as mothers involved them in change, growth, and unity with nature.<sup>174</sup> The resulting female construction of self led women to value the concrete rather than the abstract and gave them a sense of connectedness and continuity with others and with the natural world.<sup>175</sup> This standpoint—the standpoint of women based on their life activity—had important epistemological and ontological consequences for understanding and constructing social relationships.<sup>176</sup> Most important, this perspective provided a model for the socialist society of the future:

What is necessary is the generalization of the potentiality made available by the activity of women—the defining of society as a whole as propertyless producer both of use-values and of human beings.<sup>177</sup>

In other words, women's life activity formed the basis of a specifically feminist and materialist epistemology on which to build a new society.<sup>178</sup> Presumably that new society would consist of, or reward and encourage, ungendered human beings who valued connection and relationship and who produced use-values rather than commodities for exchange.

One should note the similarity between the characteristics of women Hartsock described to those in the works of various feminist writers about the same time, such as Carol Gilligan, whose theory associated a rights-oriented perspective with men and a care-oriented perspective with

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<sup>171</sup> Nancy C.M. Hartsock, *The Feminist Standpoint: Developing the Ground for a Specifically Feminist Historical Materialism*, in *DISCOVERING REALITY* 283 (Sandra Harding & Merrill B. Hintikka eds., 1983).

<sup>172</sup> *Id.* at 289.

<sup>173</sup> *Id.* at 286, 296–98.

<sup>174</sup> *Id.* at 291–94.

<sup>175</sup> *Id.* at 298–99.

<sup>176</sup> *Id.* at 299.

<sup>177</sup> *Id.* at 304.

<sup>178</sup> NANCY C.M. HARTSOCK, *MONEY, SEX, AND POWER: TOWARD A FEMINIST HISTORICAL MATERIALISM* 247 (1983).

women.<sup>179</sup> Hartsock, however, set these insights in the context of Marxist methodology, interpreting them as emerging from the productive activity of women both in the workplace and at home, rather than attributing them to socialization or psychoanalytic origin.<sup>180</sup>

#### 6. *Alison Jaggar and Marx's Theory of Alienation*

Alison Jaggar, a philosopher, is best known for her 1983 book *Feminist Politics and Human Nature*, in which she set out to describe feminism as political philosophy, discussing both the theories of human nature underlying, and the politics emerging from, liberal feminism, Marxist feminism, radical feminism, and socialist feminism.<sup>181</sup> Her particular contribution to socialist feminism was to take Marx's theory of alienation as a unifying concept, thus adapting yet another orthodox Marxist concept to socialist feminist purposes and allowing the incorporation of radical feminist and psychoanalytic insights as well.<sup>182</sup> Her jumping off point was the theory of alienated (sometimes translated as "estranged") labor set forth in the *Economic and Philosophical Manuscripts of 1844*.<sup>183</sup> Under the capitalist system of commodity production, Marx argued, workers were alienated from the products of their labor (which do not belong to them), from the act of production (which is controlled by another and necessary to gain the means to survive), from their species being (as freely creative beings), and from other human beings (by class divisions and competition with other workers).<sup>184</sup> Jaggar took Marx's concept of alienation and applied it to women. She argued that the sexual division of both productive and reproductive labor—sex-segregated employment, lack of freedom over reproduction, and compulsory heterosexuality, for example—resulted similarly in an estrangement of women from their essential being.<sup>185</sup> The only route to overcoming this alienation was to get rid of the gendered division of labor in every aspect of life: "The goal of socialist feminism is to abolish the social relations that constitute humans not only as workers and capitalists but also as women and men."<sup>186</sup>

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<sup>179</sup> See CAROL GILLIGAN, IN A DIFFERENT VOICE: PSYCHOLOGICAL THEORY AND WOMEN'S DEVELOPMENT 24–63 (1982) (describing experiments in which girls appear to make moral judgments based on caring, connectedness, and relationships, and boys on their apparent inclination toward abstract rights-based thinking).

<sup>180</sup> Cf. NANCY CHODOROW, THE REPRODUCTION OF MOTHERING: PSYCHOANALYSIS AND THE SOCIOLOGY OF GENDER (1978) (developing a psychoanalytic account of the differences between women and men).

<sup>181</sup> ALISON M. JAGGAR, FEMINIST POLITICS AND HUMAN NATURE (1983).

<sup>182</sup> TONG, *supra* note 104, at 186.

<sup>183</sup> Karl Marx, *Economic and Philosophic Manuscripts of 1844*, in THE MARX-ENGELS READER 66 (Robert C. Tucker 2d. ed., 1972).

<sup>184</sup> *Id.* at 70–77.

<sup>185</sup> JAGGAR, *supra* note 181, at 130–32.

<sup>186</sup> *Id.* at 132.

Jaggar's analysis had substantial implications for the type of political work socialist feminists should do. Women must be freed from the objectification of their bodies and of the need to be "feminine" in order to overcome the alienation of their sexuality.<sup>187</sup> Moreover, they needed to be able to control the terms upon which they became mothers, how they gave birth, and how they reared their children so as to overcome alienation in those areas of their lives.<sup>188</sup> Socialist feminist politics should therefore not only focus on equal access to, and the conditions of, paid employment but also work to further reproductive freedom—to fight against involuntary sterilization, for example, and for access to affordable contraception and abortion.<sup>189</sup> The structure of women's work in the market, as well as their wages, should also be subjects of activism, carried out by working together with unions and other employment-related groups such as Women Employed (many of which were products of socialist feminist organizing in the 1970s).<sup>190</sup> However, women's issues should not just be added to the list of concerns for a revolutionary movement. Rather, the very concept of revolution should be enlarged by socialist feminism, so as to include not only legal and structural changes but also changes in consciousness.<sup>191</sup>

#### 7. *A Case Study of Theory and Praxis: Silvia Federici and the "Wages for Housework" Movement*

There was a great deal of socialist feminist literature—both academic and in pamphlet form—beyond the canon I have chosen to construct, including work that blended theory and practice in interesting ways. The work of political philosopher Silvia Federici, widely associated with the "wages for housework" movement, provides an excellent example from the mid-1970s. Federici theorized wages for housework specifically in terms of socialist feminism in her now-classic articles, which were republished in a collection in 2012.<sup>192</sup> Her intent in raising this issue as a demand was to demystify and subvert women's role under capitalism.<sup>193</sup> The struggle was not really to be paid for housework:

In fact, to demand wages for housework does not mean to say that if we are paid we will continue to do this work. It means precisely the opposite. To say that we want wages for

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<sup>187</sup> *Id.* at 308–10.

<sup>188</sup> *Id.* at 310–16.

<sup>189</sup> *Id.* at 318–24.

<sup>190</sup> *Id.* at 324–29; see *supra* text accompanying note 45.

<sup>191</sup> JAGGAR, *supra* note 181, at 340.

<sup>192</sup> *Counterplanning from the Kitchen* (1975), in SILVIA FEDERICI, *REVOLUTION AT POINT ZERO: HOUSEWORK, REPRODUCTION, AND FEMINIST STRUGGLE* 28 (2012) [hereinafter *REVOLUTION AT POINT ZERO*]; *Wages Against Housework* (1975), in *REVOLUTION AT POINT ZERO* 15; *Why Sexuality is Work* (1975), in *REVOLUTION AT POINT ZERO* 23.

<sup>193</sup> *Wages Against Housework* (1975), in *REVOLUTION AT POINT ZERO*, *supra* note 192, at 15.



housework is the first step towards refusing to do it, because the demand for a wage makes our work visible, which is the most indispensable condition to begin to struggle against it, both in its immediate aspect as housework and its more insidious character as femininity.<sup>194</sup>

The real struggle was for better working conditions and social services, with the wage demanded simply providing an "expression of the power relation between capital and working class."<sup>195</sup> Reflecting on this in 1984, Federici argued that "as long as housework goes unpaid, there will be no incentives to provide the social services necessary . . . ."<sup>196</sup> Thus, the wages for housework movement can be seen as an example of Zillah Eisenstein's strategy to push for reforms that show the limits of liberalism and capitalism.

The socialist-feminist critique continued not only in connection with the wages for housework movement, but extended to many other areas and became more global, addressing reproductive issues, for example, environmentalism, and violence against women; in connection with each topic, authors and activists advocated explicitly socialist feminist perspectives.<sup>197</sup> A fuller discussion of the extension of socialist feminist thought into all these and other areas is beyond the confines of a single article.

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In sum, a great deal of theoretical development took place between the circulation of Heidi Hartmann's essay in 1975 and the publication of Alison Jaggar's summary of socialist feminism in the context of other forms of feminism in 1983. Zillah Eisenstein described and examined the interaction between the two systems, patriarchy and capitalism; Iris Young issued an appeal for a unified theory based on the central notion of a gendered division of labor; Nancy Hartsock developed a materialist account of women's perspective based on that division of labor; and Alison Jaggar adapted Marx's theory of alienation to describe the current separation of women from their ideal species being and called for the elimination of any and all division of labor based on gender. Finally, activist-theorists like Silvia Federici made use of socialist feminism in their practice. In the next section, I describe how socialist feminism continued to be studied and developed in the academy after 1983, though not in law schools.

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<sup>194</sup> *Id.* at 19.

<sup>195</sup> *Counterplanning from the Kitchen* (1975), in *REVOLUTION AT POINT ZERO*, *supra* note 192, at 30.

<sup>196</sup> *Putting Feminism Back on its Feet* (1975), in *REVOLUTION AT POINT ZERO*, *supra* note 192, at 58.

<sup>197</sup> See, e.g., MARIA MIES, *PATRIARCHY AND ACCUMULATION ON A WORLD SCALE: WOMEN IN THE INTERNATIONAL DIVISION OF LABOR* (1986); ROSALIND PETCHESKY, *ABORTION AND WOMAN'S CHOICE: THE STATE, SEXUALITY, AND REPRODUCTIVE FREEDOM* (1985); VANDANA SHIVA, *STAYING ALIVE: WOMEN, ECOLOGY AND DEVELOPMENT* (1988).

#### D. *Socialist Feminist Theory Did Not Disappear From the Academy*

As the previous sections demonstrate, there was a flowering of socialist feminist literature in the United States between 1975 and 1983, developing a body of classic literature that could have been very fruitful for feminist legal theory. Some scholars have suggested that socialist feminist theory then virtually disappeared after 1983.<sup>198</sup> There is some truth to this, but it is only part of the truth. Given the important relationship between this strand of theory and the civil rights, antiwar, and anti-imperialist movements, theorizing may have subsided because of the end of the war and of the most active and inter-racial phase of the civil rights movement, the backlash to feminism, and the new and more conservative political atmosphere in the era of Ronald Reagan and Margaret Thatcher. In addition, many feminist lawyers were involved in picking the low-hanging fruit, attacking facially discriminatory laws and practices, such as sex-segregated want ads and the exclusion of women from many professions. The rise of identity politics and post-modernism undoubtedly played a role as well, as theorists turned away from the universalism and essentialism many perceived in the early works of socialist and radical feminism. But socialist feminism did not in fact disappear. It persisted in disciplines other than legal theory, in the later writings of the earlier social feminist theorists, and in those of other major scholars, such as Nancy Fraser.

##### 1. *Continuity in Disciplines Other than Law*

The classics of socialist feminism continued to be read after 1983, and their ideas pervaded women's studies programs and other disciplines.<sup>199</sup> A 1991 reader published by Teresa Amott and Julie Matthaei shows that there was continued interest in a socialist feminist analysis on the part of economists.<sup>200</sup> Their book, *Race, Gender, and Work*, was specifically intended to "highlight major transformations in the gender, racial-ethnic, and class hierarchies accompanying the historical process of capitalist economic expansion" and to show how these changes had affected women's work.<sup>201</sup> Setting out stories of the labor of women of different classes, races, and

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<sup>198</sup> See, e.g., Boxer, *supra* note 14, at 144–45 (stating that "feminism faded from the public eye" in the later 1970s and during the 1980s); Kathi Weeks, *Foreword: Re-encountering Marxist Feminism*, in MICHÈLE BARRETT, *WOMEN'S OPPRESSION TODAY: THE MARXIST/FEMINIST ENCOUNTER* xv (3d ed. 2014) [hereinafter *THE MARXIST/FEMINIST ENCOUNTER*] (proposing that "the question of how to combine Marxism and feminism soon faded into obscurity" in the 1980s).

<sup>199</sup> See, e.g., Boxer, *supra* note 14, at 145.

<sup>200</sup> TERESA AMOTT & JULIE MATTHAEI, *RACE, GENDER, AND WORK: A MULTICULTURAL ECONOMIC HISTORY OF WOMEN IN THE UNITED STATES* (S. End Press Collective ed., 1991). The continued existence, activities, and publications of the Union for Radical Political Economics is another indication of this continuing interest. See *Home*, UNION FOR RADICAL POLITICAL ECON., <http://urpe.org/> [https://perma.cc/ANB2-PCFT] (last visited Sept. 25, 2016).

<sup>201</sup> AMOTT & MATTHAEI, *supra* note 200, at 4.

ethnic groups across time, they challenged the reader to think about the interdependence of gender, race, and class, and the relationship of all three to economic exploitation.<sup>202</sup>

The tradition of readers in socialist feminism has continued into the twenty-first century. One, *The Socialist Feminist Project*, was published in 2002 and includes not only updates from influential socialist feminist authors such as Sheila Rowbotham, Rosalind Petchesky, and Nancy Hartsock, but also examples of a continuing range and vitality of socialist feminist debates that build on the earlier work, under categories such as “sex, sexuality and reproduction,” “family: love, labor, and power,” “wage labor and struggles,” “economics, social welfare, and public policy,” and the like.<sup>203</sup> The articles included span the period from the mid-1980s to 2001, and the collection was specifically intended to show that socialist feminism was indeed a continuing project.<sup>204</sup> Moreover, the recent republication of Silvia Federici’s work and of another classic volume on socialist feminism by a British scholar appears to indicate a continuing interest in this theoretical perspective.<sup>205</sup> Kathi Weeks, a scholar at Duke University who has been writing in this tradition, has noted the recent resurgence of interest in socialist feminism and suggests that “we are now at a point when the standard critiques of 1970s feminism can be approached as orthodoxies of their own in need of unsettling.”<sup>206</sup> Numerous conferences aimed at resurrecting socialist feminism have been held since 2011—in the United States, the U.K., Germany, Australia, and Turkey.<sup>207</sup>

Cynthia Cockburn wrote about confronting modern-day feminists at one

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<sup>202</sup> See *id.* at 11–28 (developing a conceptual framework for examining the interplay of gender, race-ethnicity, and class).

<sup>203</sup> SOCIALIST FEMINIST PROJECT, *supra* note 89, pts. I–VI.

<sup>204</sup> *Id.* at 1.

<sup>205</sup> FEDERICI, *supra* note 192; MICHÈLE BARRETT, WOMEN’S OPPRESSION TODAY: PROBLEMS IN MARXIST FEMINIST ANALYSIS (1980); THE MARXIST/FEMINIST ENCOUNTER, *supra* note 198.

<sup>206</sup> THE MARXIST/FEMINIST ENCOUNTER, *supra* note 198, at ix, xi; see also KATHI WEEKS, THE PROBLEM WITH WORK: FEMINISM, MARXISM, ANTIWORK POLITICS AND POSTWORK IMAGINARIES (2010).

<sup>207</sup> E.g., Conference, *CLPP Feminist Conference*, SOCIALIST ACTION, in Amherst, Mass. (Apr. 12–14, 2013), <https://web.archive.org/web/20150119062031/http://socialistaction.org/event/clpp-feminist-conference/> (last visited Oct. 21, 2016); Conference, WINCONFERENCE, in Berlin, Ger. (Oct. 1–4, 2014), [http://www.winconference.net/WINConference/PAGE\\_Second/zB0AAJjdRQI5ZVVjbXZFVFFnAQA;](http://www.winconference.net/WINConference/PAGE_Second/zB0AAJjdRQI5ZVVjbXZFVFFnAQA;) Conference, *Is This as Good as It Gets? Socialist Feminist Conference*, WORKERS’ LIBERTY, in London, Eng. (Nov. 26, 2011), <http://www.womensgrid.org.uk/archive/2011/09/05/is-this-as-good-as-it-gets-socialist-feminist-conference-26-november-2011/> [<https://perma.cc/6NTV-Z9JV>] (last visited Oct. 21, 2016); Conference, *The Strong Link between Patriarchy and Capitalism*, ROJ WOMEN, in Istanbul, Turk. (Nov. 25, 2011), <https://rojwomen.wordpress.com/2011/11/25/the-strong-link-between-patriarchy-and-capitalism/> [<https://perma.cc/MF9Y-M4RX>] (last visited Oct. 21, 2016); Conference, *Feminist Futures Conference – Build a Feminist Future with Radical Women*, FREEDOM SOCIALIST PARTY, in Melbourne, Austl. (May 28–29, 2011), <http://www.socialism.com/drupal-6.8/organiser-articles/feminist-futures-conference-build-feminist-future-radical-women> [<https://perma.cc/P5AK-5BXY>] (last visited Oct. 3, 2016).

such conference with socialist feminist questions, urging “let’s get a socialist feminist current rolling again . . . that doesn’t renege on ‘equality’ but insists on transforming power; that challenges neoliberal capitalism but simultaneously sexism, racism, nationalism, militarism and religious dogma; and which reaches far beyond the border of one country.”<sup>208</sup> In short, socialist feminist thought has been at the very least a substantial undercurrent in academic feminism since the 1980s, and that current is beginning to rise.<sup>209</sup>

## 2. *Continuity in the Later Work of Iris Young and Zillah Eisenstein*

Moreover, the authors of the classics did not abandon their ideals in 1983, though some changed the terminology in which they wrote about them. In 1985, Iris Young wrote, for example, about the contradictory relationship of women to the welfare state and what had become known as “public patriarchy”—the institutions outside the family, such as the social welfare bureaucracy, that were becoming sites of oppression and control of women.<sup>210</sup> The response of a socialist feminist, she argued, should be both to support and to fight the state’s welfare institutions, seeking to expand the welfare state for what it gave to poor women yet fighting its effects on women’s autonomy and ability to define their own needs.<sup>211</sup> Progressives—which was already becoming the new term for Leftists—should also develop methods of self-help and alternative service provision to contrast with the anti-democratic and bureaucratic administration of state services.<sup>212</sup>

By 1990, however, Young wondered whether “socialist feminist” was still the correct term to describe her political approach, saying that “[r]adical politics of the ’80s and into the ’90s has become, for me and many others, more plural and contextualized than the simple label ‘socialist-feminist’ can convey.”<sup>213</sup> She described how feminists identified with this political tendency were now focused less on the structural causes of discrimination against women and had “stepped back from totalizing theory that risks

<sup>208</sup> Cynthia Cockburn, *What Now for the Women’s Movement? Feminist Conversations*, OPENDEMOCRACY (Oct. 21, 2013), <http://www.opendemocracy.net/5050/cynthia-cockburn/what-now-for-womens-movement-feminist-conversations> [https://perma.cc/FS25-CUNU] (last visited Oct. 21, 2016).

<sup>209</sup> See Johanna Brenner, *Socialist-Feminism in the 21st Century*, 29 AGAINST THE CURRENT, Mar.–Apr. 2014, at 20, 20–23 (describing how socialist feminist ideas have gained purchase as women in popular movements organized to challenge patriarchy); see also Melissa Benn, *Feminism Needs to Tackle Class as well as Culture: New Women’s Rights Groups Could Present a Popular and Serious Challenge to More Entrenched Inequalities*, GUARDIAN, Nov. 18, 2013, at 30 (describing a resurgence of the feminist movement that emphasizes representation).

<sup>210</sup> Iris Marion Young, *Women and the Welfare State*, in *THROWING LIKE A GIRL*, *supra* note 158, at 62 (originally published in *SOCIALIST POLITICS* (1985)).

<sup>211</sup> *Id.* at 63–65.

<sup>212</sup> *Id.* at 66.

<sup>213</sup> *THROWING LIKE A GIRL*, *supra* note 158, at 5.

universalizing particular social perspectives.”<sup>214</sup> She expressed herself as nevertheless still committed to the goals of socialist feminism:

I now find the project of constructing a single feminist historical materialist theory overly ambitious and naïve. I still think, however, that the promise of socialist feminism to provide specific accounts of the relations of laboring activity that will explain the production and reproduction of male domination remains important and largely unfulfilled . . . .

Politically, socialist feminism has always entailed a commitment to radically transform capitalist patriarchal institutions, to create an economy that no longer runs for profit, that is democratically controlled, in which women’s work is equally valued and women do not suffer violence and sexual exploitation.<sup>215</sup>

She remained committed to this vision.<sup>216</sup> Were it not for her premature death in 2006, I am sure that Iris Young would have continued to contribute to the development of socialist feminist theory.

Zillah Eisenstein has never stopped addressing the complex questions of subordination and exploitation that were the central concern of socialist feminists. In 1990, she wrote of the need to retheorize socialist feminism after the fall of communism in Eastern Europe and in light of the demands for greater democracy in China, the radical pluralism introduced into feminism by women of color, and the new context of neoconservatism, concluding that, “I no longer think socialist feminism is an accurate naming of my politics.”<sup>217</sup> This was due in part to the absence of socialist feminist politics in the United States and the impossibility of attracting mainstream feminists in the neoconservative era with the term “socialism.”<sup>218</sup> It was time to develop a “post-socialist” feminism, she argued, free of “the constraints of traditional socialist analysis, defined by priorities of economic class,” one that was adequate to represent the insights that had emerged from recognizing that economic class relations were both gendered and racist.<sup>219</sup> The task was thus no longer to rethink Marxism, but to rethink socialist feminism itself, and to build a radicalized and reconstructed feminism on its foundations, even while changing them.<sup>220</sup>

In sum, both Young’s and Eisenstein’s later work was directed at developing and expanding upon their earlier work in socialist feminist

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<sup>214</sup> *Id.* at 4.

<sup>215</sup> *Id.* at 4–5.

<sup>216</sup> *Id.* at 5.

<sup>217</sup> Zillah Eisenstein, *Specifying US Feminism in the 1990s: The Problem of Naming*, 20 SOCIALIST REV., Apr.–June 1990, at 45.

<sup>218</sup> *Id.* at 46–47, 50.

<sup>219</sup> *Id.* at 48.

<sup>220</sup> *Id.* at 49, 52.

theory so as to address the new world of diversity and global neoliberalism, showing the interconnections among the oppression of women, racism, and imperialism in that new world. Their overall vision and goals had not changed. A scholar describing the development of women's studies programs reached similar conclusions from interviewing women who had been instrumental in building socialist feminism in Chicago and taking it into the academy. They "still identified themselves as Left, materialist, progressive, or socialist feminists," although their views had become more complex over the decades.<sup>221</sup> She reported about what one of her informants said:

Although no women's studies programs now call themselves socialist feminist, "they all have the emphases" on women and globalization from Marxist, antiracist, and feminist perspectives. "What we have is much more widespread anti-capitalist understanding than when we started," and "nobody who works in free-standing women's studies thinks women's liberation is possible in global capitalism . . . ."<sup>222</sup>

In short, many of the women involved in the original theorizing and activism based on socialist feminism are still around and have not changed their views in this respect.

### 3. *Continuity in the Work of Other Scholars: Nancy Fraser*

Other scholars, some of whom self-identified as socialist feminists as well as some who did not, also built on and developed the insights of the classic period after 1983. Philosopher Nancy Fraser, for example, has written repeatedly about welfare, needs, and distribution in late capitalist society, identifying her theory as socialist feminist.<sup>223</sup> She has focused in particular on how to integrate claims for economic redistribution and for status recognition in a comprehensive theoretical frame.<sup>224</sup> Noting the massive swing to identity politics and away from claims for economic equality, she theorized the two types of justice claims as two dimensions of justice in a world where subordinated groups suffer from both maldistribution and misrecognition.<sup>225</sup> Fraser argued for adopting political

<sup>221</sup> Gardiner, *supra* note 36, at 580.

<sup>222</sup> *Id.* at 580–81 (quoting from her informants).

<sup>223</sup> See, e.g., *Struggle Over Needs: Outline of a Socialist-Feminist Critical Theory of Late Capitalist Political Culture*, in NANCY FRASER, *UNRULY PRACTICES: POWER, DISCOURSE AND GENDER IN CONTEMPORARY SOCIAL THEORY* 161 (1989).

<sup>224</sup> See, e.g., Nancy Fraser, *Social Justice in the Age of Identity Politics: Redistribution, Recognition, and Participation*, in NANCY FRASER & AXEL HONNETH, *REDISTRIBUTION OR RECOGNITION?: A POLITICAL-PHILOSOPHICAL EXCHANGE* 7–109 (2003) (describing the current trend in which claims for social justice are split between distribution and recognition).

<sup>225</sup> *Id.* at 19–22.

campaigns that integrate the two perspectives without reducing either to the other, such as the campaign for comparable worth, in which “a claim to redistribute income between men and women was expressly integrated with a claim to change gender coded patterns of cultural value.”<sup>226</sup> She advocated what she called “nonreformist reforms,” ones that would set in motion more radical reforms.<sup>227</sup> Here she had in mind struggling for social-democratic reforms such as a steep progressive tax on income, universalist social welfare entitlements unaccompanied by the stigma attached to needs-based entitlements, economic policies aimed at full employment, significant public ownership of resources, and a large non-market public sector.<sup>228</sup> Her hope was to revive, in the twenty-first century context, “the sort of socialist-feminist theorizing that first inspired me decades ago and that still seems to offer our best hope for clarifying the prospects for gender justice in the present period.”<sup>229</sup> To do this, Fraser argued, it was essential to integrate claims for redistribution, recognition, and representation so as to “reconnect feminist critique to the critique of capitalism—and thereby re-position feminism squarely on the Left.”<sup>230</sup>

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In short, the seeds sown by the socialist feminist activists and theorists during the 1970s and early 1980s continued to bear fruit in the academy long after that time and to provide an influential strand of thought in both the social sciences and the humanities. Moreover, all of the authors discussed above found good homes in academia where they presumably “infected” generations of their students. Heidi Hartmann left academia to found the Institute for Women’s Policy Research in 1987, of which she is still president, but the academic credentials of the other socialist feminist authors discussed above are distinguished. At the time of her death, Iris Young, though a philosopher, was a full professor of political science at the University of Chicago. Zillah Eisenstein, now retired, spent her career as a professor in the political science department at Ithaca College. Nancy Fraser is a professor of philosophy at the New School, Nancy Hartsock was a professor of political science at the University of Washington until her death, and Alison Jaggar is a professor in the philosophy and gender studies

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<sup>226</sup> *Id.* at 66. Comparable worth is a remedy for job segregation by sex and the gender pay gap that relies upon evaluating the knowledge and skills required for different jobs and requiring equal pay for those that are comparable. See BOWMAN ET AL., *supra* note 15, at 954–59 (detailing the origins of the “comparable worth” concept and its potential to shrink the wage gap); see also *Am. Fed’n of State, Cty., & Mun. Emps. v. Washington*, 770 F.2d 1401, 1408 (9th Cir. 1985) (finding that unequal pay for jobs of equal value was not a violation of federal antidiscrimination law).

<sup>227</sup> Fraser, *supra* note 224, at 79–80.

<sup>228</sup> *Id.* at 80.

<sup>229</sup> Nancy Fraser, *Feminism, Capitalism and the Cunning of History*, 56 NEW LEFT REV., 97, 98 (Mar.–Apr. 2009), at 97, 98.

<sup>230</sup> *Id.* at 116.

departments at the University of Colorado.<sup>231</sup> In sum, socialist feminists not only survived but flourished within the academy. But not in law schools.

## II. SOCIALIST FEMINISM AND THE LEGAL ACADEMY

In the early 1970s, women began to flood into law schools, where they had previously not been welcomed.<sup>232</sup> As a result of lawsuits and the threat of suits in the wake of the Civil Rights Act, both law schools and law firms realized they could no longer exclude women.<sup>233</sup> The number of women in U.S. law schools jumped from 4% of the total in 1967 to 20% by 1974–1975 and 40% by 1985–1986.<sup>234</sup> This, of course, was also the period of social and political activism described above in Section I and the height of the socialist feminist movement. Many of the women newly in law school had been involved in activism themselves prior to embarking on the study of law.<sup>235</sup> They continued their political activity in law school, organizing to address discrimination there, initiating a lawsuit against ten major Wall Street firms, lobbying for courses on women and the law, and establishing a national organization of women law students.<sup>236</sup> Out of the courses on women and law eventually came textbooks, of which there were a total of eight by the mid-1990s.<sup>237</sup> Most of the women who established the field of feminist jurisprudence graduated from law school prior to 1980.<sup>238</sup> This Section

<sup>231</sup> Alison Jaggar, UNIV. OF COLO. BOULDER PHILOSOPHY, <http://www.colorado.edu/philosophy/people/alison-jaggar> [<https://perma.cc/A3XJ-NVD5>] (last visited Oct. 3, 2016); Nancy Fraser, THE NEW SCH., <http://www.newschool.edu/nssr/faculty/?id=4e54-6b31-4d41-3d3d> [<https://perma.cc/79LR-PP7B>] (last visited Oct. 3, 2016); Catherine G. Quinn, *Passing of Nancy Hartsock*, UNIV. OF WASH. DEP'T OF POLITICAL SCI. (Apr. 28, 2015, 2:40 PM), <https://www.polisci.washington.edu/news/2015/04/28/passing-nancy-hartsock> [<https://perma.cc/PE8M-69RH>] (last visited Oct. 3, 2016).

<sup>232</sup> See CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 50–67 (1981) (describing reluctance to admit women to law schools and the hostile environment that greeted them upon their admission); see also KAREN BERGER MORELLO, *THE INVISIBLE BAR: THE WOMAN LAWYER IN AMERICA: 1638 TO THE PRESENT* 103–05 (1986) (same).

<sup>233</sup> See, e.g., Cynthia Grant Bowman, *Women in the Legal Profession from the 1920s to the 1970s: What Can We Learn from Their Experience about Law and Social Change?*, 61 ME. L. REV. 1, 13–15 (2009) (describing the 1970s litigation and the subsequent growth in hiring female attorneys).

<sup>234</sup> Richard K. Neumann Jr., *Women in Legal Education: What the Statistics Show*, 50 J. LEG. EDUC. 313, 314 (2000).

<sup>235</sup> See Cynthia Grant Bowman, *The Entry of Women into Wall Street Law Firms: The Story of Blank v. Sullivan & Cromwell*, in *WOMEN AND THE LAW STORIES* 419–20 (Elizabeth M. Schneider & Stephanie M. Wildman eds., 2011).

<sup>236</sup> *Id.* at 421–27.

<sup>237</sup> MARTHA CHAMALLAS, *INTRODUCTION TO FEMINIST LEGAL THEORY* 114 (2d ed. 2003).

<sup>238</sup> As an indication of the influence of the 1970's law graduates on developing feminist legal theory, here are the law school graduation dates of some of those associated with its early development: Sylvia A. Law (1968), *Sylvia A. Law*, N.Y.U. L., <https://its.law.nyu.edu/facultyprofiles/index.cfm?fuseaction=profile.overview&personid=20071> [<https://perma.cc/4ZSC-4RYL>] (last visited Oct. 3, 2016); Frances E. Olsen (1971), *Frances Elisabeth Olsen*, UCLA LAW, <https://law.ucla.edu/faculty/faculty-profiles/frances-elisabeth-olsen/> [<https://perma.cc/U7VP-E4MZ>] (last visited Oct. 3, 2016); Patricia A.



describes the development of feminist legal theory as a discipline and the lack of development of socialist feminist theory within that discipline.

### A. *The Development of Feminist Legal Theory in the Legal Academy*

The first textbooks on women and law focused on case law and the quest for formal equality.<sup>239</sup> This reflected the campaign being carried out during the 1970s under the aegis of Ruth Bader Ginsburg and the ACLU Women's Rights Project. Exclusionary practice after exclusionary practice fell during that decade, until feminist lawyers ran up against the obstacles posed by biological differences—losing cases, for example, about pregnancy discrimination, which did not fit the jurisprudential distinctions developed under the Equal Protection Clause of the Constitution.<sup>240</sup> Theoretical arguments tended initially to focus on distinctions between “sameness” and “difference” theories of equality—whether to pave the way for women to be assimilated into the world of men or to make accommodations for their differences so that they might then compete on a more realistically equal basis. Calls for understanding and valuing the unique experiences of women, which had been ignored by the law, issued from the pens of feminist legal theorists like Robin West.<sup>241</sup> Feminist scholars and activist lawyers split into

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Cain (1973), *Patricia A. Cain*, UNIV. OF IOWA, <http://law.uiowa.edu/patricia-cain> [<https://perma.cc/CD44-VEKU>] (last visited Oct. 3, 2016); Elizabeth Schneider (1973), *Elizabeth Schneider*, ELIZABETH M. SCHNEIDER, CURRICULUM VITAE OF ELIZABETH M. SCHNEIDER 1, <https://www.brooklaw.edu/services/FacultyFiles.ashx?filetype=resume&id=liz.schneider> [<https://perma.cc/G4Z5-AQ74>] (last visited Oct. 3, 2016); Katharine T. Bartlett (1975), KATHARINE T. BARTLETT, CURRICULUM VITAE OF KATHARINE T. BARTLETT 1 (2015), [https://law.duke.edu/sites/default/files/cv/bartlett\\_cv\\_april\\_2015.pdf](https://law.duke.edu/sites/default/files/cv/bartlett_cv_april_2015.pdf) [<https://perma.cc/CXC4-4FSA>] (last visited Oct. 3, 2016); Martha Chamallas (1975), MARTHA CHAMALLAS, CURRICULUM VITAE OF MARTHA CHAMALLAS 2 (2015), OHIO ST. UNIV. MORITZ COLL. OF LAW, [http://moritzlaw.osu.edu/faculty-old/cv/chamallas\\_martha.pdf](http://moritzlaw.osu.edu/faculty-old/cv/chamallas_martha.pdf) [<https://perma.cc/W2ZB-7GC9>] (last visited Oct. 3, 2016); Catharine A. MacKinnon (1975), *Catharine A. MacKinnon*, BIOGRAPHY, <http://www.biography.com/people/catharine-a-mackinnon-9393211> (last visited Aug. 31, 2016); Deborah L. Rhode (1975), *Deborah L. Rhode*, STANFORD LAW SCH., <https://law.stanford.edu/directory/deborah-l-rhode/> [<https://perma.cc/PK8M-33FC>] (last visited Oct. 3, 2016); Martha Minow (1979), *YLS Graduate Martha Minow '79 Named Dean of Harvard Law School*, YALE LAW SCH. (June 11, 2009), <https://www.law.yale.edu/yls-today/news/yls-graduate-martha-minow-79-named-dean-harvard-law-school> [<https://perma.cc/976L-GFKG>] (last visited Oct. 3, 2016); and Robin West (1979), ROBIN L. WEST, CURRICULUM VITAE 1, <https://www.law.georgetown.edu/faculty/upload/CV.pdf> [<https://perma.cc/Y66G-PYCJ>] (last visited Oct. 3, 2016).

<sup>239</sup> See BARBARA ALLEN BABCOCK ET AL., *SEX DISCRIMINATION AND THE LAW: CAUSES AND REMEDIES* (1975); HERMA HILL KAY, *TEXT, CASES, AND MATERIALS ON SEX-BASED DISCRIMINATION* (3d ed. 1981).

<sup>240</sup> See, e.g., BOWMAN ET AL., *supra* note 15, at 25–52 (describing the women's rights litigation campaign during the period from 1971 to 1981).

<sup>241</sup> See Robin West, *Jurisprudence and Gender*, 55 U. CHI. L. REV. 1 (1988); Robin L. West, *The Difference in Women's Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 3 WIS. WOMEN'S L.J. 81 (1987).

different camps along these lines—for example, over whether equality required that women be given disability leave for pregnancy or whether treating women differently from men would stereotype them and make them less desirable employees.<sup>242</sup>

Catharine MacKinnon's entry into the debate, with the publication of her book *Sexual Harassment of Working Women* in 1979, her two essays in *Signs* in 1982-83, and the many speeches and essays that were eventually published in *Feminism Unmodified* in 1987, made this dialogue deeper, louder, and more complex.<sup>243</sup> MacKinnon launched a devastating attack on both the "sameness" (or formal equality) branch of feminist theory and the "difference" (often known as cultural or relational feminism) branch, arguing that men provided the standard against which both branches measured equality and that all of law granted men a kind of affirmative action program as a result.<sup>244</sup> MacKinnon's own focus was on the relationship of gender to the distribution of power, proposing that a discriminatory practice be discerned by whether it "participates in the systemic social deprivation of one sex because of sex."<sup>245</sup> MacKinnon's theory and her political/legal work—for example, devising the underlying legal theory and EEOC standards for sexual harassment as well as defending them before the Supreme Court<sup>246</sup> and drafting an ordinance to make a civil rights claim for harms caused by pornography<sup>247</sup>—resulted in what were undoubtedly the most influential works of feminist legal theory.<sup>248</sup>

The 1990s were marked by intensifying claims by women of color that feminist legal theory was "essentialist," or premised on the experiences of white women of a certain class. Angela Harris launched this attack against both Catharine MacKinnon and Robin West, arguing that the experiences of African American women had been ignored in their work and describing the benefits that inclusion of the insights of women of color would add to

<sup>242</sup> See *Cal. Fed. Sav. & Loan Ass'n v. Guerra*, 479 U.S. 272 (1987) (affirming the Ninth Circuit's holding that Title VII and the Pregnancy Discrimination Act do not discriminate against men). For excerpts from competing briefs filed by different feminist groups, see *BOWMAN ET AL.*, *supra* note 15, at 208–11.

<sup>243</sup> CATHARINE A. MACKINNON, *FEMINISM UNMODIFIED: DISCOURSES ON LIFE AND LAW I* (1987) [hereinafter *FEMINISM UNMODIFIED*]; CATHARINE A. MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN* (1979); Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: An Agenda for Theory*, 7 *SIGNS: J. WOMEN IN CULTURE & SOC'Y* 515 (1982) [hereinafter *SIGNS I*]; Catharine A. MacKinnon, *Feminism, Marxism, Method, and the State: Toward Feminist Jurisprudence*, 8 *SIGNS: J. WOMEN IN CULTURE & SOC'Y* 635 (1983) [hereinafter *SIGNS II*].

<sup>244</sup> See MacKinnon, *Difference and Dominance*, in *FEMINISM UNMODIFIED*, *supra* note 243, at 32–40.

<sup>245</sup> MACKINNON, *SEXUAL HARASSMENT OF WORKING WOMEN*, *supra* note 243, at 117.

<sup>246</sup> *Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (1986).

<sup>247</sup> See ANDREA DWORKIN & CATHARINE A. MACKINNON, *PORNOGRAPHY & CIVIL RIGHTS: A NEW DAY FOR WOMEN'S EQUALITY* app. D (1988) (setting out the model antipornography civil-rights ordinance).

<sup>248</sup> For an excellent short history of feminist legal theory, see CHAMALLAS, *supra* note 237.

feminist legal theory.<sup>249</sup> A related claim was made by lesbian feminist legal theorists.<sup>250</sup> Very soon the identity politics that had overtaken feminism and Left politics in general became prevalent in the legal academy as well, making the field of feminist legal theory at once more complex and contested, on the one hand, and more profound in its understandings, on the other, contributing the concept of intersectionality, as just one example, and developing new fields such as critical race theory and new groups such as the Latcrits.<sup>251</sup>

## B. *Hints of Socialist Feminism in the Emerging Feminist Legal Theory*

The one strand of critical theory that did not develop into its own cognizable branch of feminist legal theory was socialist feminism. Law reviews and other legal literature were virtually devoid of any indication that the new feminist legal scholars were familiar with socialist feminist theory, with one glaring exception: Catharine MacKinnon. MacKinnon had clearly read this literature, was sympathetic to it, but disagreed with the approach overall. Other women who came out of a Marxist or Left background were initially drawn to the Critical Legal Studies movement.

### 1. *MacKinnon and Marxism*

MacKinnon was thoroughly familiar with Marxist, socialist, and socialist feminist theory<sup>252</sup> and made sophisticated use of it in her deft subversion of Marxism in the *Signs* essays:

Sexuality is to feminism what work is to Marxism: that which is most one's own, yet most taken away. Marxist theory argues that society is fundamentally constructed of the relations people form as they do and make things needed to survive humanly. Work is the social process of shaping and

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<sup>249</sup> Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1990). Harris's claim that MacKinnon and West ignored the experience of African American women was somewhat unfair. Both authors repeatedly demonstrate their sensitivity to racial differences, although they do not make them the central focus of their work.

<sup>250</sup> Patricia A. Cain, *Feminist Jurisprudence: Grounding the Theories*, 4 BERKELEY WOMEN'S L.J. 191 (1989).

<sup>251</sup> See Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEG. F. 139 (1989) (discussing intersectionality theory). For an excellent example of Latcrit theory, see Juan F. Perea, *The Black/White Binary Paradigm of Race: The "Normal Science" of American Racial Thought*, 10 LA RAZA L.J. 127 (1998). For an excellent, succinct description of the contributions of critical race and lesbian/gay/queer theory, see CHAMALLAS, *supra* note 237, at 135–72.

<sup>252</sup> MacKinnon had clearly read the literature of socialist feminism, both academic and activist, by the time she wrote the *Signs* essays. See, e.g., SIGNS I, *supra* note 243, at 521 n.10 (citing the "wages for housework" literature); *id.* at 522 n.12 (citing the Ehrenreich essay, among others); *id.* at 524 n.15 (citing Rowbotham and Chicago Women's Liberation Union, among others); *id.* at 524 n.17 (citing Mitchell and Eisenstein, among others); *id.* at 524–25 n.17 (citing Hartmann, Gordon, among others).

transforming the material and social worlds, creating people as social beings as they create value. It is that activity by which people become who they are. Class is its structure, production its consequence, capital a congealed form, and control its issue.

As the organized expropriation of the work of some for the benefit of others defines a class—workers—the organized expropriation of the sexuality of some for the use of others defines the sex, woman. Heterosexuality is its structure, gender and family its congealed forms, sex roles its qualities generalized to social persona, reproduction a consequence, and control its issue.

Marxism and feminism are theories of power and its distribution: inequality.<sup>253</sup>

Yet MacKinnon argued forcefully that Marxism and feminism could not be synthesized, as socialist feminism tried to do; they were, she argued, profoundly antagonistic, and attempts to do so subsumed feminism into Marxism and ignored sexuality as a form of power.<sup>254</sup>

In *Toward a Feminist Theory of the State*, MacKinnon extended her critique of Marxism from the point of view of women.<sup>255</sup> Karl Marx, she argued, saw women as defined by nature, supporting her argument by citing chapter and verse from his works that demonstrated Marx's limited understandings as a nineteenth-century male.<sup>256</sup> She pointed out that "he did not systematically see that he shared what he considered natural, and his considering it *as* natural, with the bourgeois society he otherwise criticized."<sup>257</sup> Friedrich Engels, by contrast, did see the subordination of women not as natural but as something to be explained, yet he understood women's status as simply a product of the family form particular to capitalism.<sup>258</sup> Changes in family form were, in turn, a product of economic changes, and Engels did not believe that a division of labor by sex was inherently exploitative.<sup>259</sup> Thus both Marx and Engels presupposed a split between the public (male) and private (female) spheres.<sup>260</sup> Indeed, MacKinnon argued, Marxists shared the naturalism of liberal theory in many ways, and so did feminist theorists like Mary Daly, Carol Gilligan, Simone

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<sup>253</sup> *Id.* at 515–16.

<sup>254</sup> *Id.* at 523–26.

<sup>255</sup> See CATHARINE A. MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE* 3–80 (1989) [hereinafter MACKINNON, *TOWARD A FEMINIST THEORY OF THE STATE*].

<sup>256</sup> *Id.* at 13–19.

<sup>257</sup> *Id.* at 19.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 22–24.

<sup>260</sup> *Id.* at 28, 35–36.

de Beauvoir, Shulamith Firestone, Juliet Mitchell, Nancy Chodorow, and Dorothy Dinnerstein.<sup>261</sup>

The only almost successful attempt to synthesize socialism and feminism, in MacKinnon's opinion, was the wages for housework approach, which "aspire[d] to explain both sex and class within a theory marxian in scope yet feminist in basis . . . breaking the ideological tie of [house]work to women's biology . . . ."<sup>262</sup> In this connection MacKinnon discussed many of the insights described above, not only with respect to the wages for housework movement, but also the theories of Juliet Mitchell, Heidi Hartmann, and Zillah Eisenstein—that is, that women's free labor in the home produces surplus value for capital and that women provide a reserve army of cheap labor and also perform roles as both psychological and economic safety valves for the family and economy.<sup>263</sup> Grounding women's power thus in their productive roles "makes women's liberation a critical moment in class struggle."<sup>264</sup>

The problem with the wages for housework approach, MacKinnon said, was that such a wage would tie women to the home and legitimate their role as homemakers; it also did not address the problem of sexual objectification and violence against women in all its forms.<sup>265</sup> Her first point is true, of course, only if the wages for housework demand is taken literally and not, as Silvia Federici portrayed it in the work described above, as a demand meant to be the functional equivalent of a refusal to perform this role.<sup>266</sup> Despite her critique, MacKinnon was very sympathetic to the wages for housework approach:

[T]he theory precisely intends to expose the hidden assumptions of male dominance in marxist economics . . . [arguing], in essence, for the commensurability of women's work in the home with other forms of laboring for capital in order to end the inequality it expresses, in order to contribute to ending the "fixed personal relations of dependence" that are posited as a presupposition for the abstraction of labor necessary for it to have a capitalist character. . . .

The "wages for housework" perspective is an attempt to synthesize feminism with marxism which uniquely exposes the dual nature of labor under capitalism as a locus at once of oppression and of possible liberation. . . .

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<sup>261</sup> *Id.* at 45–59.

<sup>262</sup> *Id.* at 63, 65.

<sup>263</sup> *Id.* at 66–67.

<sup>264</sup> *Id.* at 66.

<sup>265</sup> *Id.* at 69.

<sup>266</sup> See *supra* text accompanying notes 193–96.

. . . As an apex of synthetic attempts, it forces reexamination both of housework from a marxist point of view and of marxist economics from women's point of view. . . . [W]hat emerges is a simultaneous critique of the society that excludes women from its center and a critique of the marxist theory that can see women only at its periphery.<sup>267</sup>

In short, the synthesis thus worked out in the wages for housework literature was a substantial accomplishment, but it was not sufficient for MacKinnon, who ultimately rejected socialist feminism as Marxism that simply incorporated women's issues into an unchanged Marxist analysis.<sup>268</sup> As she put it most succinctly, "Radical feminism is feminism. Radical feminism—after this, feminism unmodified—is methodologically post-marxist. It moves to resolve the marxist-feminist problematic on the level of method."<sup>269</sup> While Marxism saw change as external, radical feminism saw it as both external and internal; the feminist method MacKinnon had in mind was consciousness-raising, which she developed both as an epistemology and a political technique.<sup>270</sup> MacKinnon proceeded also to describe a theory of the state and law as male—in their objectivity, in their assumption of separate private and public spheres, and in law's substantive norms that legitimated men's control over women's sexuality.<sup>271</sup>

The relationship between sexuality and power clearly was of most interest to MacKinnon, and she has made exploring that relationship in diverse settings her life's work. Although taking Marxism as her point of departure, she shifted "from attempting to connect feminism and Marxism on equal terms to attempting to create a feminist theory that could stand on its own;" such a theory would be created "by distilling feminist practice."<sup>272</sup> In this sense, MacKinnon's work can be analogized to that of the radical feminists in the 1970s, although I am reluctant to put her theory into any pigeonhole. However, her relationship to socialist feminism turns out to be more complex than often assumed, and not entirely unsympathetic.<sup>273</sup>

<sup>267</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 255, at 78–80.

<sup>268</sup> SIGNS I, *supra* note 243, at 524.

<sup>269</sup> SIGNS II, *supra* note 243, at 639–40.

<sup>270</sup> SIGNS I, *supra* note 243, at 520; see MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 255, at 83–125 (describing consciousness raising as the feminist methodology).

<sup>271</sup> SIGNS II, *supra* note 243, at 644–45, 655–57.

<sup>272</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 255, at x.

<sup>273</sup> The Preface to TOWARD A FEMINIST THEORY OF THE STATE, for example, states that

Marxism is its point of departure because Marxism is the contemporary theoretical tradition that—whatever its limitations—confronts organized social dominance, analyzes it in dynamic rather than static terms, identifies social forces that systematically shape social imperatives, and seeks to explain human freedom both within and against history. It confronts class, which is real. It offers both a critique of

## 2. *Beyond MacKinnon's Negative Judgment of Socialist Feminism*

Apart from MacKinnon's extensive—and, on balance, negative—analysis, there were only a few traces of the socialist feminist tradition in the feminist literature that began to issue from the legal academy in the 1980s. One openly socialist-feminist, albeit very brief, essay was included in the 1982 collection *The Politics of Law: A Progressive Critique*, a volume that originated as a project of the National Lawyers Guild and became a joint project with the Conference on Critical Legal Studies.<sup>274</sup> Its author was a member of one of the New York City socialist feminist theory groups in the late 1970s and early 1980s.<sup>275</sup> She argued that power relationships must be seen as having both class and gender dimensions, although capitalism had so integrated the preexisting subordination of women that women's status now was “the product of the interaction of two separate systems of domination: capitalism and patriarchy.”<sup>276</sup> Legal gains for women, she proposed, depended on, among other things, “the relative strength of women's movements and conflicts between patriarchy and the needs of the capitalist economic system.”<sup>277</sup> To the extent that progressive lawyers and law students used this volume in study groups (as I did), they were thus exposed to the most elementary description of socialist feminism.

UCLA law professor Fran Olsen referred to some of the early socialist feminist literature in her 1982 article attacking the ideology of the public-private split, in which she explored differences in the ways that naturalism, autonomy, state neutrality and non-intervention operate with respect to two institutions within the allegedly private sphere—the family and the market.<sup>278</sup> Olsen's path-breaking article, contemporaneous with MacKinnon's *Signs* articles, pointed in a direction essential to socialist feminism, though not specifically identified with that school of thought; it cleared away a good deal of the obfuscation and mystification surrounding the public-private split and demonstrated the differences such an ideology

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the inevitability and inner coherence of social injustice and a theory of the necessity and possibilities of change.

*Id.* at ix.

<sup>274</sup> Diane Polan, *Toward a Theory of Law and Patriarchy*, in *THE POLITICS OF LAW: A PROGRESSIVE CRITIQUE* 294 (David Kairys ed., 1982); see also *THE POLITICS OF LAW*, *supra*, at 7 (describing origins of the volume). The National Lawyers Guild (NLG) is a group of progressive lawyers organized in 1937; for its history, see *Our History*, NAT'L LAWYERS GUILD CHI. (2014), <http://nlgchicago.org/about/history/> [<https://perma.cc/6APK-957A>] (last visited Oct. 21, 2016).

<sup>275</sup> Polan, *supra* note 274, at 294 n.

<sup>276</sup> *Id.* at 295.

<sup>277</sup> *Id.* at 301.

<sup>278</sup> See Frances E. Olsen, *The Family and the Market: A Study of Ideology and Legal Reform*, 96 HARV. L. REV. 1497, 1513 n.65 (1983) (citing JULIET MITCHELL, *WOMAN'S ESTATE*, *supra* note 94, at 152–58); *id.* at 1539 n.159 (discussing Silvia Federici and wages for housework); *id.* at 1560–66 (discussing Marx and his critique of the state/civil society dichotomy).

made to law. In the early 1990s, Deborah Rhode also made a few references to the classic socialist feminist literature in her *Harvard Law Review* piece on *Feminism and the State*,<sup>279</sup> and law professor Marion Crain betrayed familiarity with some of the classic socialist feminist authors in her work on labor law.<sup>280</sup>

Apart from these early references, the voice of socialist feminism was almost unrepresented in legal theory. Was it perhaps because Catharine MacKinnon's forceful argument had convinced other feminist theorists that this was a blind alley? I very much doubt this explanation. Indeed, I doubt that many feminist legal theorists were thoroughly familiar with MacKinnon's grounding in Marxism. Those who had read the *Signs* articles would have been exposed to it, but only in part, and *Signs* is far from standard literature for lawyers. However, MacKinnon's detailed analysis of Marx and Engels and description and criticism of various attempts to synthesize Marxism and feminism, including the wages for housework movement, did not appear in the *Signs* articles. MacKinnon's most accessible book, published in 1987, was *Feminism Unmodified*, which consisted of a series of essays and speeches on different topics, but did not include her analysis of Marxism. *Toward a Feminist Theory of the State* (1989) does, but many people may have been led to believe that it was simply a reworking of the *Signs* essays and those in *Feminism Unmodified* (1987). Indeed, the introduction to the 1989 book described MacKinnon's editor as having said that the relation between the 1987 and 1989 books was: "You've seen the movie, now read the book."<sup>281</sup> At any rate, not a single review I have found of *Toward a Feminist Theory of the State* discusses the first eighty pages, which treat Marxism's relationship to feminism and attempts to synthesize the two, suggesting that the reviewers had not read that part, felt inadequately prepared to confront it, or thought it of little significance.<sup>282</sup> So MacKinnon's intervention cannot explain the subsequent

<sup>279</sup> See Deborah L. Rhode, *Feminist Critical Theories*, in FEMINIST JURISPRUDENCE 594 (Patricia Smith ed., 1993) (citing Heidi Hartmann, *The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union*, in WOMEN AND REVOLUTION I 2 (Lydia Sargent ed., 1981)); Deborah L. Rhode, *Feminism and the State*, 107 HARV. L. REV. 1181, 1183-84 (1994) (referring to and describing work by Gayle Rubin, Heidi Hartmann, Michèle Barrett, and Nancy Fraser).

<sup>280</sup> See Marion Crain, *Between Feminism and Unionism: Working Class Women, Sex Equality, and Labor Speech*, 82 GEO. L.J. 1903, 1903 n.2 (1994) (referring to Zillah Eisenstein's *Constructing a Theory of Capitalist Patriarchy and Socialist Feminism*); Marion Crain, *Feminizing Unions: Challenging the Gendered Structure of Wage Labor*, 89 MICH. L. REV. 155, 1200-04, 1200 n.257, 1201 n.264, 1203 n.276 (1991) (referring to Heidi Hartmann, *Capitalism, Patriarchy, and Job Segregation by Sex*).

<sup>281</sup> MACKINNON, TOWARD A FEMINIST THEORY OF THE STATE, *supra* note 255, at xiv.

<sup>282</sup> E.g., Kathryn Abrams, *Feminist Lawyering and Legal Method*, 16 LAW & SOC. INQUIRY 373 (1991); Ruth Colker, *Feminist Consciousness and the State: A Basis for Cautious Optimism*, 90 COLUM. L. REV. 1146 (1990); Drucilla Cornell, *Sexual Difference, the Feminine, and Equivalency: A Critique of MacKinnon's Toward a Feminist Theory of the State*, 100 YALE L.J. 2247, 2254-55 (1991) (discussing MacKinnon's Marxism only with respect to her theories of the state); Stephanie M. Wildman, *Review Essay: The Power of Women*, 2 YALE J.L. & FEMINISM 435 (1990).



absence of socialist feminism from feminist legal theorizing.

### 3. *Critical Legal Studies and the Fem Crits*

So where did all the women who had been active in the movements of the 1960s and 1970s go when they went into law teaching? Many Left-leaning women in law teaching gravitated toward Critical Legal Studies, or CLS, the academic home of scholars leaning toward the Left politically. CLS originated in 1976 out of a proposal to construct a place where people doing academic studies in law could connect around a variety of common themes—some arising out of Marxism, some out of the Legal Realist tradition, and some influenced by Continental philosophy emphasizing deconstruction and the indeterminacy of law.<sup>283</sup> All tended to agree that law was, in one sense or another, political.<sup>284</sup> The group held national conferences, at which women law professors began to feel that their concerns were “ghettoized,” that is, consigned to panels attended mostly by women and subjected to sexist remarks.<sup>285</sup> By the mid-1980s, the feminists within CLS, or Fem Crits, had come to represent a definite group of their own, and soon issues of gender, race, and ethnicity began to dominate the agendas of CLS conferences.<sup>286</sup>

Critical feminism began to diverge from CLS analyses in a variety of ways, however. For example, while the Fem Crits agreed with CLS about the indeterminacy of law, stressing its subjectivity and gender bias, the two approaches diverged in the Fem Crits’ emphasis on experiential analysis (deriving evidence from women’s experiences).<sup>287</sup> Critical feminism also made a turn away from general theory and visions of the ideal and into identity politics. Most interesting, from my perspective, is that feminist legal theorists did not mine the socialist feminist tradition that was available to them, nor did they gravitate to a socialist feminist approach in their writing. For reasons I describe in the next section, I believe that this turning impoverished the developing field and that a return to the insights of socialist feminism would enrich feminist legal analysis today.

## III. THE UNEXPLORED POTENTIAL OF SOCIALIST FEMINIST LEGAL THEORY

At this point, I should articulate the ideal of socialism that emerges from the history and theory described in Section I. One key point is that

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<sup>283</sup> Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1523–28 (1991). Tushnet reports that some adherents had come out of the civil rights movement but others were “red diaper babies,” whose parents had been Left activists affected by McCarthyism. *Id.* at 1534–35.

<sup>284</sup> See *id.* at 1539.

<sup>285</sup> Carrie Menkel-Meadow, *Feminist Legal Theory, Critical Legal Studies, and Legal Education* or “The Fem-Crits Go to Law School,” 38 J. LEG. EDUC. 61, 63 (1988).

<sup>286</sup> Rhode, *Feminist Critical Theories*, *supra* note 279, at 594.

<sup>287</sup> See *id.* at 596, 601.

capitalism, even the regulatory New Deal version,<sup>288</sup> is incompatible with full human flourishing, especially for women. Nonetheless, capitalism is a useful analytic category in the present time, when it provides a seemingly unified system that dominates the global economy. And economic forces—the relations of production and reproduction—while not the only factors, are essential explanatory tools for students of history, society, and gender. Patriarchy, among other things, is a relation of production.<sup>289</sup>

The following values would inform an alternative system based on socialism: the economy would not be organized around profit as the sole or primary motivating force. A radically transformed state, no longer captured by business interests, would function as an instrument to democratize both the economy and the society. To do so, it would use collective resources to ensure that all citizens were freed of the constraints of basic necessity, could participate in the control of their work lives through institutions like collective bargaining, co-management, and others yet to be tried or even envisaged, and would have a genuinely effective and equal voice in determining the government that carried out these policies. Women's role would be particularly important in this process, both because their lives demand these changes and because the perspective of women is more aligned with the imperatives of a non-capitalist system.

Recapturing the perspective of socialist feminism can bring numerous valuable insights to feminist jurisprudence. I will describe just a few of them here, and I encourage readers to think of more. The incorporation of socialist feminism into the study of law would bring, in a general sense, a more profound understanding of the interdependence and interpenetration of the private and public spheres and the economic impact of that interdependence, a commitment to the inclusion of race and class as well as gender in legal theoretical analysis, and a more complex class analysis with categories pertinent to women's multiple roles. It would remind us, as well, that any

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<sup>288</sup> For an argument that the New Deal was itself simply an aberration in American history, see Jefferson Cowie & Nick Salvatore, *The Long Exception: Rethinking the Place of the New Deal in American History*, 74 INT'L LABOR & WORKING-CLASS HIST. 3 (2008).

<sup>289</sup> I am reminded by David Gilbert that Marx says in his *Preface to the Critique of Political Economy* that the "sum total of these relations of production constitute the economic structure of society." See Tucker, *supra* note 3, at 4. Gilbert writes that

[p]atriarchy, capitalism, and imperialism are all fundamental relations of production, and . . . each has its related necessary forms of oppression. There will be . . . no human liberation without our taking on and overthrowing all three of these inter-related and mutually reinforcing but still somewhat different forms. . . . [W]e're all in one prison, with patriarchy/capitalism/imperialism basic and reinforcing pillars, and with a lot of other more specific prison cells that keep us divided.

Letter from David Gilbert to Cynthia G. Bowman (2015) (on file with author) (commenting on a draft of this article). Perhaps this carceral image is the appropriate resolution of the choice between a dual or unified systems theory described *supra* at Section I.C.2–4.

meaningful analysis of gender relations must be international in scope, given that the majority of women live in the Global South, where patriarchy is still strong, and that both domestic and international aspects of economic exploitation must be explored.<sup>290</sup>

In the field of employment law, the injection of socialist feminism would yield a better understanding of the tenacity of discrimination against women in employment, given its centrality to both patriarchy and capitalism. It would offer an analysis of the sexual division of labor that would deepen our understanding of what is necessary in order to change it, and an understanding of the gender division of labor as international. To family law, socialist feminism would bring a highly developed analysis of the economic functions of the household and their relationship to the greater economy. Rather than a sometime focus on “work/life issues,” the spotlight would be on the fundamental incompatibility between the way the household and market economies are currently structured and the assumptions upon which they are based. Attention would be directed to the dependence of American women upon the labor of immigrant women for the care of both the very young and the very old, at exploitative rates of pay. A sensitivity to the underlying interests at stake in the struggle over reproductive autonomy for women would be inevitable. The connection between the disruption of communities by economic crisis and violence against women would be explored.

This is far from a comprehensive list of the substantive insights feminist legal theory could import from socialist feminism; I invite participation in the construction of a longer list. There are also many pragmatic suggestions socialist feminism has to offer about a strategy for effective change in the legal, political, social, and economic position of women. All of the early socialist feminist theorists agreed in their emphasis on the interrelationship among race, sex, and class. Prioritizing issues that integrate the interests of women of these different groups in order to build alliances among them is of central importance. In addition, socialist feminist theorists emphasized making changes that would improve the lives of women now, while also building a sense of collective consciousness. Rather than simply adding to the entitlements of elite groups of women, the focus should thus be on reforms that improve many women’s lives with respect to issues they have in common, while also increasing both their power and sense of their own power. Socialist feminist authors such as Zillah Eisenstein proposed that heightening the contradictions in women’s lives and in the economy through piecemeal reform is a positive thing, because it will raise the consciousness of all women in the long run and turn them into a force for systemic change, because the conditions for their thriving in all of their life roles require such

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<sup>290</sup> As I was reminded recently, not only is patriarchy a relation of production that must be disrupted, but so are imperialism and ecocide. Interview with David Gilbert, Auburn Correctional Facility, in Auburn, N.Y. (Dec. 23, 2014).

major change. In this sense, socialism also imports a certain tolerance for conflict and a recognition that confrontation is required for any major long-term change that involves a greater sharing of wealth and privilege. At the same time, socialist feminism also offers a basis for a greater sense of solidarity across differences of identity, which is sorely needed in the women's movement today.

How would this affect our research and writing? An example of a law review article that reflects a socialist feminist approach even though it does not explicitly claim to do so is *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate* by Taunya Lovell Banks.<sup>291</sup> The article discusses the public and legislative debate occasioned when the first two women nominated to be Attorney General of the United States were required to withdraw from consideration because they employed undocumented women as childcare workers and failed to pay social security on their wages.<sup>292</sup> While apparently only familiar with socialist feminism from Marion Crain's description of Alison Jaggar's summary of it in *Feminist Politics and Human Nature*,<sup>293</sup> Banks proceeds to address the very questions such an approach requires: the division of labor in the home that assigns child care to women and the construction of this issue as belonging to the private sphere,<sup>294</sup> the structure of labor in the workplace that requires women professionals who aspire to be men's equals to hire another woman full time to care for their children,<sup>295</sup> the undervaluation of such caregiving in terms both of status and low pay and its underregulation,<sup>296</sup> the globalization of the market for migrant women to serve as low-paid childcare workers as a result of the lack of work in poor countries,<sup>297</sup> and the issues of race, citizenship, and class pervading that market.<sup>298</sup> Banks is not hopeful about the possibility of collective action to address the situation of domestic workers, not only because of the racial and citizenship divisions among these working women but also because of the isolation in which they work.<sup>299</sup> Yet an analysis like hers is a great contribution to legal feminism, and it demonstrates the acuity of vision that proceeding from a socialist feminist viewpoint may provide.

Now, I believe, is the time to embrace these insights. This is so not only because the critical analysis they offer is particularly relevant to issues

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<sup>291</sup> Taunya Lovell Banks, *Toward a Global Critical Feminist Vision: Domestic Work and the Nanny Tax Debate*, 3 J. GENDER, RACE & JUST. 1 (1999).

<sup>292</sup> *Id.* at 2-4.

<sup>293</sup> See *id.* at 39 n.187 (providing Crain's citation to JAGGAR, *supra* note 181, at 124).

<sup>294</sup> *Id.* at 6-11.

<sup>295</sup> *Id.* at 21-24.

<sup>296</sup> *Id.* at 11-14.

<sup>297</sup> *Id.* at 30-36.

<sup>298</sup> *Id.* at 18-21, 24-29.

<sup>299</sup> *Id.* at 40.

women face in the twenty-first century, but also because socialism is likely to meet a more receptive audience than in past decades. The immense numbers of young people who responded to Bernie Sanders's presidential campaign based on an overt appeal to socialism surprised many observers. Perhaps it should not have been so surprising. The new focus on inequality and the economy, reflected in the "Occupy" movement, stands in stark contrast to public debate in previous decades. As one writer in *The Nation* put it, the 2008 financial crisis made it seem that capitalism had flunked a test, and the damage fell disproportionately on the younger members of society.<sup>300</sup> This has spawned a contingent of young journalists and bloggers who have begun to identify themselves as Marxists.<sup>301</sup> Law professors and political scientists, moreover, have begun to challenge that sacred cow, the United States Constitution, arguing that its archaic structure prevents the action necessary to sustain a democracy in this era.<sup>302</sup>

Recent history appears to show that the underlying principles of democracy and of capitalism are incompatible and that effective and equal freedom is not attainable within the current economic and political system. Since the financial crisis of 2008 and the continuing stalemate between the President and Congress, American academia and society have been open to reconsidering the most basic assumptions of our economic and constitutional systems. The presumptive connections between capitalism and greater equality, on the one hand, and between capitalism and greater democracy, on the other hand, have been seriously challenged and become matters for public debate. Thomas Piketty's 2014 book, *Capital in the Twenty-First Century*, which demonstrated the history and inevitability of ever-growing economic inequality in the absence of major governmental intervention, spent months on the *New York Times* bestseller list. Moreover, much of the research underlying that volume had been appearing in Paul Krugman's columns in the *New York Times* since at least 2002.<sup>303</sup> In addition, among the "100 Notable Books of 2014," according to the *New York Times*, was one that argues that climate catastrophe cannot be avoided within the current capitalist and political system.<sup>304</sup> In short, I believe the

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<sup>300</sup> Timothy Shenk, *What Was Socialism?*, NATION, May 5, 2014, at 27, 30–31.

<sup>301</sup> *Id.* at 31–32.

<sup>302</sup> See, e.g., ROBERT A. DAHL, HOW DEMOCRATIC IS THE AMERICAN CONSTITUTION? (2001); DANIEL LAZARE, THE FROZEN REPUBLIC: HOW THE CONSTITUTION IS PARALYZING DEMOCRACY (1996); SANFORD V. LEVINSON, OUR UNDEMOCRATIC CONSTITUTION: WHERE THE CONSTITUTION GOES WRONG (AND HOW WE THE PEOPLE CAN CORRECT IT) (2006); Jeffrey Toobin, *Our Broken Constitution*, NEW YORKER, Dec. 9, 2013, at 64–73.

<sup>303</sup> See, e.g., Paul Krugman, *For Richer*, N.Y. TIMES (Oct. 20, 2002), <http://www.nytimes.com/2002/10/20/magazine/for-richer.html?pagewanted=all> (last visited Oct. 21, 2016) (including a discussion of "immigrant Nanny care and the reproduction of privilege").

<sup>304</sup> NAOMI KLEIN, THIS CHANGES EVERYTHING: CAPITALISM VS. THE CLIMATE (2014); see *100 Notable Books of 2014*, N.Y. TIMES (Dec. 2, 2014), [http://www.nytimes.com/2014/12/07/books/review/100-notable-books-of-2014.html?\\_r=0](http://www.nytimes.com/2014/12/07/books/review/100-notable-books-of-2014.html?_r=0) (last visited Sept. 25, 2016).

time is ripe to introduce critical theories that challenge the assumptions underlying neoliberalism and neocapitalism; socialist feminism is such a theory.

### CONCLUSION

The purpose of this article has been to recapture a vital strand of modern feminist thought for use in legal theory. Socialist feminism presents a vibrant tradition of debate and contestation that emerged from the confrontation between the women's movement and the New Left in the context of the civil rights and antiwar movements. Socialist feminist theorists developed a conceptual framework that offered an alternative understanding of gendered relations of power that is important to understand both law and legal change. This perspective can be instructive for feminist legal theory in the current era, as fundamental institutions are once again challenged. In this article, I have described the basic insights of the classic works of socialist feminism developed between 1975 and 1983 and tried to give some indications of how those insights could enrich feminist legal theorizing today. I have also noted the lack of attention to socialist feminist theory in the legal academy, where only Catharine MacKinnon took it seriously by disagreeing with it, and other feminist theorists by and large failed to incorporate what I believe to be a valuable intellectual contribution made by committed women in the 1960s, 1970s, and 1980s.

Yet there may be a sense in which the values and goals of socialist feminism have animated the work of many current feminist legal scholars, without any acknowledgement of the debt. I am thinking of feminist legal theorists such as Robin West, in her insistence upon the connections between justice and caring,<sup>305</sup> Martha Fineman, in her development of vulnerability theory,<sup>306</sup> Joan Williams, in her project to disrupt separate spheres ideology and to show its relationship to domesticity and class,<sup>307</sup> and others, like Martha McCluskey, who focus on economics and class.<sup>308</sup> Moreover, references to socialist feminist classics have begun again to creep into a few

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<sup>305</sup> ROBIN WEST, *CARING FOR JUSTICE* (1997).

<sup>306</sup> MARTHA ALBERTSON FINEMAN, *THE AUTONOMY MYTH: A THEORY OF DEPENDENCY* (2004); Martha Albertson Fineman, *Cracking the Foundational Myths: Independence, Autonomy, and Self-Sufficiency*, in *FEMINISM CONFRONTS HOMO ECONOMICUS: GENDER, LAW, AND SOCIETY* 179–92 (Martha Albertson Fineman & Terence Dougherty eds., 2005) [hereinafter *FEMINISM CONFRONTS HOMO ECONOMICUS*].

<sup>307</sup> JOAN C. WILLIAMS, *RESHAPING THE WORK-FAMILY DEBATE: WHY MEN AND CLASS MATTER* (2010); see also Laura T. Kessler, *Feminism for Everyone*, 34 SEATTLE UNIV. L. REV. 679 (2011) (discussing Williams's book).

<sup>308</sup> Martha T. McCluskey, *Deconstructing the State-Market Divide: The Rhetoric of Regulation from Workers' Compensation to the World Trade Organization*, in *FEMINISM CONFRONTS HOMO ECONOMICUS*, *supra* note 306, at 147–74; Martha T. McCluskey, *The Politics of Economics in Welfare Reform*, in *FEMINISM CONFRONTS HOMO ECONOMICUS*, *supra* note 306, at 193–224; see also Laura T. Kessler, *Getting Class*, 56 BUFF. L. REV. 915 (2008).

law review footnotes, and even into the text.<sup>309</sup>

To explore the extent to which feminist legal theory may have absorbed socialist feminism without explicitly referring to it escapes the bounds of this Article.<sup>310</sup> Perhaps many of us are in fact socialist feminists under the surface. Our theorizing can only be improved, however, by acknowledging the intellectual debt we owe to the women who developed socialist feminist theory out of practice in the 1970s and 1980s, by our improving upon it as necessary, and by applying it to analyze the many critical problems that face women today.

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<sup>309</sup> See Kessler, *Feminism for Everyone*, *supra* note 307, at 688–90 n.71 (discussing socialist feminist classics from the 1970s); Naomi S. Stern, *The Challenges of Parental Leave Reforms for French and American Women: A Call for a Revived Feminist-Socialist Theory*, 28 VT. L. REV. 321, 339–40 (2004); see also Janet Halley, *Sexuality Harassment*, in LEFT LEGALISM/LEFT CRITIQUE 81 (Wendy Brown & Janet Halley eds., 2002) (“[I]t is time for a return to a socialist feminist understanding of this piece of left legalism.”); Risa L. Lieberwitz, *Contingent Labor: Ideology in Practice*, in FEMINISM CONFRONTS HOMO ECONOMICUS, *supra* note 306, at 324–37; Vicki Schultz, *Reconceptualizing Sexual Harassment*, 107 YALE L.J. 1683, 1758 n.402 (1998) (referring to Heidi Hartmann’s early work).

<sup>310</sup> I originally intended to include a fuller discussion of this question in this article, as well as more detail about the current of socialist feminism in the social sciences and humanities, but decided to defer them for an additional contribution when this one began to exceed the appropriate bounds of a law review article.